THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

SEPTEMBER 1999 VOLUME 8, ISSUE 2

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The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 R..R.O. 1990 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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ISSN 1481-6148

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General Announcements

Pension Plans Branch - structure, roles and responsibilities

The Pension Plans Branch (PPB) is comprised of four distinct units: the Operations Unit; the Actuarial Consulting Unit, the Technical Consulting Unit, and the Administration and Operations Support Unit. The overall responsibility of PPB is to support the Superintendent in the administration of the *Pension Benefits Act* of Ontario (*PBA or Act*) and its regulations.

Operations

The Operations Unit consists of 16 pension officers, four senior pension officers, and a senior manager. There are approximately 7,000 registered pension plans in Ontario. Each plan is assigned to one of the 20 officers, who is responsible for ensuring compliance with the Act, and the Regulations, policies, procedures and practices of the Financial Services Commission of Ontario (FSCO).

Both the senior pension officers and the pension officers perform a variety of tasks in discharging their responsibilities, including the review and processing of applications for pension plan registrations and plan amendments; wind-ups; asset transfers; conversions and surplus reversions. The officers deal directly with administrators, consultants, and plan members on a daily basis.

The insolvency section, which is now part of the Operations Unit, is staffed by two insolvency co-ordinators. They are responsible for co-ordinating the administration of the wind-up process for pension plans of insolvent companies, including the appointment of third party administrators, and the review and processing of applications for the Pension Benefit Guarantee Fund (PBGF).

Actuarial Consulting

The Actuarial Consulting Unit, which is managed by the chief actuary, is comprised of a risk and compliance specialist, an actuarial associate and an actuarial assistant. The primary role of the unit is to provide professional actuarial services to staff in the Operations Unit, and in the supervision of the financial condition of pension plans. Actuarial staff review actuarial reports submitted to or filed with the PPB, and develop policies and guidelines regarding the review of the reports. The unit also lends its expertise to policy development in such areas as plan design, funding, valuation and the PBGF.

Technical Consulting

The Technical Consulting Unit is a unit of three technical consultants and a senior manager. The unit is responsible for providing technical advice and training on pension regulation to PPB staff.

The Filings and Data Verification section is also part of the Technical Consulting Unit. This section is responsible for ensuring that plan administrators comply with the Act's filing requirements. The section staff consists of a compliance officer, a compliance assistant and two co-op students.

Administration and Operations Support

The Administration and Operations Support Unit is comprised of four staff who co-ordinate a range of program and administrative support services including finance and human resources support; issues management; correspondence and document flow; and information and records management. The unit also co-ordinates the development and maintenance of effective computer systems support for the PPB.

Making enquiries on pension matters

Every day, administrators, their agents, consultants and plan members pose a variety of questions to FSCO's PPB staff. Questions generally fall into two categories - general and plan specific.

Questions of a general nature are either answered by the receptionist, or directed to the person responsible for answering calls that day. Routine or general enquiries receive a verbal response. If an enquiry is plan specific, the caller will be directed to the pension officer responsible for that plan.

Any enquiry will be answered by phone, if possible. However, a caller may be asked to put the question in writing. Callers are asked to explain the issue as clearly as possible so the enquiry may be processed quickly. Sometimes a seemingly straightforward enquiry can actually be complex, or raise other issues with significant implications.

If you are making a written enquiry, you should:

1. provide a brief background note
2. explain the business purpose of your proposed action
3. separate the legal issues from the policy issues

In addition, provide your assessment of the situation. Tell PPB staff what you think and why. It is helpful for staff to hear your view of any broader policy implications that the issue may raise. Your suggested direction or answer may well be correct.

While PPB staff are available to answer questions on administrative and policy issues, they cannot provide legal advice.

PPB staff are required to deal with enquiries responsibly for the protection of all parties involved. At the same time, they strive to provide the best possible service. The quality of the service and the timeliness of the response depend largely on the quality and specificity of the submission.

Contacts for Plan Specific Enquiries

Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	(416) 226-7826	See Note 1
Vacant – See Note 2	Pension Officer	See note 2	='s-ASCU
Penny McIlraith	Pension Officer	(416) 226-7822	Associates-BTM
Sharon Polischuk	Pension Officer	(416) 226-7819	Bull-CDA
Irene Mook-Sang	Pension Officer	(416) 226-7824	Central-CUSO
Lynda Ellis	Senior Pension Officer	(416) 226-7809	See Note 1
Maureen Barber	Pension Officer	(416) 226-7790	En-Gkn
Deric Jacklin	Pension Officer	(416) 226-7768	Gko-Hz
Vacant - See Note 2	Pension Officer	See note 2	I-King
David Allan	Pension Officer	(416) 226-7803	Kinh-Mark
Gino Marandola	Senior Pension Officer	(416) 226-7820	See Note 1
Jeff Chuchman	Pension Officer	(416) 226-7807	D Graz-Em
John Graham	Pension Officer	(416) 226-7774	Marl-Nes
Simon Laxon	Pension Officer	(416) 226-7781	Net-Pepsi
Larry Martello	Pension Officer	(416) 226-7821	Pepsij-Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	(416) 226-7816	See Note 1
Todd Hellstrom	Pension Officer	(416) 226-7814	Roc-Sons
Gwen Gignac	Pension Officer	(416) 226-7812	Sont-The Drop
Stanley Chan	Pension Officer	(416) 226-7806	The Droq-Unicorp
Clifford Amilcar	Pension Officer	(416)226-7804	Unicorq-Zz

Note 1: Senior Pension Officers (SPO) will have a special allocation.
The administrators of the plans assigned to the SPOs will be notified shortly.

Note 2: Please contact the SPOs for these allocations.

Staff changes

At the Pension Advisory Forum last spring, the PPB outlined its proposal to implement a restructuring which included the creation of a new position, senior pension officer. The goal of the restructuring is to improve service to our stakeholders:

The restructuring will see the staff of the Operations Unit organized into teams with the senior pension officer acting as the team leader. There will be four teams established consisting of one senior pension officer, four pension officers, and one junior position to be created.

The senior pension officers are Lynda Ellis, Rosemine Jiwa-Jutha, Gino Marandola and Jaan Pringi. In August the branch finalized the composition of the teams and recruited four pension officers to fill current vacancies. Nardeo Sham is the new Senior Manager, Operations.

All registered pension plans will continue to be allocated primarily to the pension officers, with the senior pension officers having a small allocation. Plan administrators and their representatives will continue to have a single point of contact in the normal course of business. In addition, the senior pension officers provide an alternate, stable point of contact. A result of these changes was the need to revisit the basis of allocating the pension plans.

The allocation changes have now been finalized and the vacant pension officer positions have been filled. Plan administrators are advised to review the Pension Plan Allocation list to see the name of their pension officer.

Carla Adams has left the Pension Plans Branch and joined the Pension Policy Unit as senior policy analyst. She may be contacted at 416-226-7756.

FSCO's decision-making process

Effective July 1, 1998, the *Financial Services Commission of Ontario Act, 1997*, places all first-instance decision-making authority in the hands of the Superintendent of Financial Services. This change has required the Superintendent to delegate some decision-making responsibilities and required FSCO to develop — in consultation with stakeholders — new decision-making processes. FSCO is committed to a decision-making process that is effective and efficient, fair and equitable, open and transparent, and displays integrity. Not only does the FSCO legislation give the Superintendent responsibility for first-instance decision-making, it also provides the Superintendent with broad authority to delegate decision-making to others in the organization. To increase efficiency, the Superintendent has delegated certain decision-making powers to FSCO staff. "Who does what" is based on the nature of the application and the expertise required to make the decision. Under delegated authority, first-instance decisions are made by staff in some cases, and by the Director of the Pension Plans Branch in others.

The Superintendent has retained authority for certain key first-instance decisions. These include:

- approving an application to pay surplus to an employer;
- consenting to a refund of member or former member contributions;
- consenting to a refund of employer overpayments or expenses;
- approving a transfer of assets from one pension fund to another where terms or conditions are imposed;
- ordering the wind-up of a pension plan; and
- revoking the registration of a pension plan that does not comply with the *Pension Benefits Act (PBA)* and Regulation.

An internal committee first reviews those matters the Superintendent will decide. This committee consists of the Director of the Pension Plans Branch and the Director of the Policy and Communications Branch, with legal counsel acting as an advisor.

An independent appeal process is an essential component of the decision-making process. The legislation provides that any party served with a Notice of Proposal may request a hearing before the Financial Services Tribunal (FST or Tribunal). The FST is an independent, adjudicative body that hears appeals from regulatory decisions by the Superintendent and reviews proposed orders of the Superintendent. It is committed to providing a decision-making process that meets high standards, is accessible, and is guided by fair practices and procedures.

An open and transparent decision-making process requires that decisions made by the Superintendent and the FST be communicated widely to stakeholders with an interest in regulatory developments. In a policy published in the April 1999 edition of the *Pension Bulletin*, FSCO indicated its intention to publish:

- final decisions of the Superintendent on all matters where a Notice of Proposal has been issued, including final decisions on many matters that were not routinely published by the former Pension Commission of Ontario (PCO);
- final decisions of the Superintendent on certain matters where a Notice of Proposal is not required, including final decisions on significant matters such as the allocation of assets from the Pension Benefits Guarantee Fund and the appointment of administrators;
- requests for hearings by the FST regarding decisions or proposed decisions of the Superintendent and key dates related to such hearings;
- decisions of the FST, including interim rulings; and
- charges laid under the *PBA*, after the first appearance before the courts, and the outcome of prosecutions.

These decisions are published in the *Pension Bulletin* (pension decisions only) and posted to FSCO's website at **www.fsco.gov.on.ca.** The Superintendent's decisions with respect to routine matters, such as the approval of a wind-up report, will not be published by FSCO.

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Financial Services Commission Of Ontario Statement Of Priorities 2000-2001

The Financial Services Commission of Ontario (FSCO) is an arm's-length agency of the Ministry of Finance. A regulatory and adjudicative body established under the *Financial Services Commission of Ontario Act, 1997*, it became fully operational as of July 1, 1998.

The creation of FSCO reflects the trend toward integration in the financial services marketplace. FSCO regulates insurance, pension plans, loan and trust companies, credit unions and caisses populaires, mortgage brokers and co-operatives. FSCO's mandate is to protect the public interest and enhance public confidence in the regulated sectors. To do this, FSCO works to deliver efficient and effective regulatory services that protect consumers and promote a stable, reliable and competitive industry.

FSCO is committed to being a vigilant, fair-minded and forward-looking regulatory agency with a constructive presence in Ontario's financial services marketplace. Its regulatory functions reassure consumers that insurance claims will be paid, pension promises kept and deposits safeguarded reinforcing public confidence, the foundation for the industry.

The structure of FSCO comprises three elements: the Commission or "Board," the Financial Services Tribunal, and the Superintendent of Financial Services and staff.

The Commission or "Board" has five members: the Chair and two Vice-Chairs appointed by the Lieutenant-Governor-in-Council; the Director of Arbitrations responsible for the automobile insurance dispute resolution system; and the Superintendent of Financial Services, who is also FSCO's Chief Executive Officer. The Board has a number of statutory responsibilities, including publishing FSCO's annual Statement of Priorities, and making recommendations to the Minister of Finance on matters affecting the regulated sectors.

The Financial Services Tribunal is an independent adjudicative body that hears appeals of regulatory decisions by the Superintendent and reviews proposed orders of the Superintendent. The Tribunal includes a Chair and two Vice-Chairs, who are also the Chair and Vice-Chairs of the FSCO Board, plus up to 12 members with experience and expertise in the regulated sectors.

The Tribunal is committed to providing a decision-making process that meets high standards, is accessible and is guided by fair practices and procedures.

The Superintendent of Financial Services is responsible for general supervision of the regulated sectors. All FSCO staff report directly or indirectly to the Superintendent. The staff, who are civil servants under the *Public Service Act*, perform FSCO's day-to-day work.

In pursuing its mandate, FSCO maintains crucial relationships with a diverse range of stakeholders including consumers, suppliers and administrators of financial services, financial services professionals and advisors, and other federal and provincial regulators. Under the legislation, FSCO is required to deliver to the Minister of Finance and publish by June 30 each year, a statement setting out its proposed priorities for the following fiscal year. The annual Statement of Priorities and the process used to develop it represent key vehicles for communication between FSCO and its stakeholders.

FSCO's first Statement of Priorities was published in the summer of 1998. FSCO's second Statement of Priorities, covers the period April 1, 2000 to March 31, 2001. This statement incorporates comments received from FSCO's stakeholders earlier this year, as well as feedback received as a result of a Request for Submissions published by FSCO in The Ontario Gazette on April 24, 1999.

Progress report

FSCO's first Statement of Priorities outlined a series of initiatives to achieve the overriding goal of protecting the interests of consumers. Substantial progress in implementing this agenda was made in the 1998-99 fiscal year.

The consolidation of the three predecessor organizations the Ontario Insurance Commission, the Pension Commission of Ontario and the Deposit Institutions Division of the Ministry of Finance was successfully completed with a seamless transition for the regulated sectors. The integration of management from the three organizations was accomplished, along with the relocation of staff to a single location in north Toronto, a move designed to achieve cost savings for the new organization. The Financial Services Tribunal adopted interim rules of practice and procedure and held its first hearings.

In consultation with the industry, FSCO established a transparent decision-making process for pension applications formerly decided by the PCO but now determined by the Superintendent. A new process for developing pension policies to guide the application of the legislation was designed. The new policy process involves continued stakeholder participation.

To ensure FSCO's computer systems were prepared for the Year 2000, modifications were made to FSCO's computer systems. Contingency plans were developed to ensure continued delivery of critical programs and services in the event of any serious business disruptions arising as a result of the transition to the Year 2000. FSCO also raised awareness of the Year 2000 issue among the regulated sectors to encourage them to take proactive steps to prevent service disruption.

FSCO worked with the Ontario Securities Commission (OSC) to create a national forum of insurance, pension and securities regulators that will advance the harmonization and co-ordination of financial services regulation. The Joint Forum of Financial Market Regulators includes representatives from the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA). The mandate of the Joint Forum is to coordinate and streamline the regulation of products and services in the Canadian financial markets. Some of the initiatives of the Joint Forum include the regulation of segregated funds and mutual funds, distribution structures, financial planning and information sharing.

An independent review of FSCO's process for the filing of rates and risk classification systems by auto insurers was conducted, and recommendations were made for increasing the cost-effectiveness and efficiency of the process. To better inform consumers, FSCO published a guide called *Shopping for Car Insurance*, which includes the results of insurers' first claims satisfaction surveys. FSCO also supported the government's two-year review of the automobile insurance system, which led to the tabling of fine-tuning legislative amendments in late 1998.

More than 180 submissions were received in response to the Discussion Paper on Regulation of Insurance Distribution and Co-ordination of Financial Services Regulation. Given the evolving national debate on regulatory structures in the financial servic sector, FSCO decided not to proceed with the proposed industry-based regulatory body. However, FSCO will move on other issues raised in the paper, including licensing, consumer protection and co-ordination of financial services regulation.

FSCO established an Advisory Council to provide ongoing advice and recommendations on such matters as priorities, budgets, fees and assessment structures. Chaired by the Superintendent, the advisory group includes balanced representation from the communities of interest affected by FSCO.

Priorities for 2000-2001

FSCO's strategic priorities for 2000-2001 are to:

- increase emphasis on consumer protection through education,
- improve operational effectiveness and service,
- simplify the regulatory environment,
- promote compliance, and
- strengthen FSCO as an organization.

While the priorities listed are for the next fiscal year, FSCO will begin working on them immediately. The following sections explain why these priorities have been adopted and how FSCO intends to address them.

Increase emphasis on consumer protection through education

FSCO's first Statement of Priorities, published last year, declared that protecting the interests of consumers – such as depositors, insurance policy-holders and pension plan members – is the fundamental purpose of financial services regulation and the reason FSCO exists. This principle remains valid.

In an increasingly complex marketplace, it is essential for consumers to understand the products and pricing being offered, as well as the opportunities and risks of investing in long-term financial security. Knowledgeable and informed consumers are the driving force in a competitive market: they demand top value and reward those who deliver it.

In recent months a strong consensus has emerged that consumer knowledge, information and skills must be increased. This was a theme sounded by both the MacKay Task Force Report on the Future of the Canadian Financial Services Sector and the Stromberg Report on Investment Funds in Canada and Consumer Protection.

To empower consumers, FSCO will increase emphasis on consumer education. One initiative will be an analysis of consumer information needs and how they are currently being met. FSCO will then work with industry, consumer and educational groups to develop a plan to facilitate efforts to fill gaps and improve consumer access to the right information at the right time.

FSCO's website at **www.fsco.gov.on.ca** is an important element in the focus on consumer education. The site's design will be made more user-friendly, and the consumer information content will be expanded. In the longer term, FSCO will explore interactive options and strategic linkages with related sites. In addition, FSCO will publish an up-to-date guide for pension plan members.

The Office of the Insurance Ombudsman will work with consumer and industry groups on new initiatives to assist consumers when buying insurance, making claims or resolving problems with insurers. The Office will set up a process for collecting data on complaints from insurance companies, as a basis for further planning.

In response to concerns raised during the two-year review of auto insurance legislation, FSCO will work with consumers and insurers to develop a plain language automobile policy disclosure form and a standard settlement disclosure form.

Improve operational effectiveness and service

FSCO is accountable for the cost-effective use of the funds entrusted to it. The organization is committed to excellence in operations and strives to deliver timely, high-quality regulatory services while minimizing costs. Through continuous improvement in regulatory processes and business operations, FSCO will protect consumers more effectively and sustain a healthy, competitive marketplace.

A project team will continue with a review of all FSCO business processes and practices to improve FSCO's operational efficiency and reduce the industry's compliance costs. All branches of the organization are participating in the review and redesign of processes to re-engineer and streamline operations while enhancing consumer protection. For example, FSCO is reviewing

the regulatory process for the mortgage brokerage sector in close consultation with front-line practitioners, financial institutions and industry and consumer associations. FSCO will also develop and begin to implement a plan for conducting a review of the administration of the Pension Benefits Guarantee Fund. FSCO will move forward on its plans to establish a centralized service centre to handle inquiries and complaints from its external stakeholders.

At the same time, FSCO will develop and publish performance measures for all operations. Improved response time will be targeted for pension applications. Pension plan registration and wind-ups, for example, will be accelerated. The criteria for submitting automobile rate and risk classification filings under an expedited process will be expanded and filing guidelines will be simplified, following a recent consulting study on the filing process. The Financial Services Tribunal will develop performance measures and service standards for its adjudicative processes.

FSCO will make adjustments to the dispute resolution system for automobile accident benefits, in line with recommendations in an evaluation report by Hon. George Adams. While concluding that the system is working well, the report made suggestions for improvement. Recommendations focused on such areas as the need to revise timelines in the arbitration process to reduce delay, and the need to reconsider the strict divisions between mediation and arbitration given the substantial opportunity for mediation during the arbitration stage.

FSCO will continue to explore opportunities for applying a risk-based approach to supervision of all of the sectors it regulates. In the area of pensions, FSCO will implement a risk-based system for supervising the financial condition of pension plans. The initial steps will be to verify risk-assessment criteria for use in screening plans and selecting those requiring in-depth review. In designing and developing its overall approach, FSCO will take into consideration the model used by the federal Office of the Superintendent of Financial Institutions.

FSCO will promote the use of alternative dispute resolution principles and processes across the sectors it regulates.

Simplify the Regulatory Environment

To minimize costs and red tape while strengthening consumer protection, FSCO is working energetically to harmonize processes with other regulators. The financial services marketplace will function better if regulatory requirements can be co-ordinated and simplified to achieve greater consistency and reduce gaps and overlaps. While the role of an arm's-length regulator is to implement government legislation and policy directions, FSCO also advises the government on how to enhance the regulatory framework .

FSCO will continue to play a leadership role in the Joint Forum of Financial Market Regulators, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA). In response to requests from the CCIR and CAPSA, FSCO has prepared business cases for the creation of permanent secretariats to support the ongoing work of these bodies. Costs will be shared by the participating jurisdictions, with Ontario's portion recovered from the industry. The secretariats will assist the regulators in strengthening consumer protection by delivering and managing initiatives to simplify regulations and harmonizing regulatory activities in consultation with the industry and other stakeholders.

The Joint Forum of Financial Market Regulators has initiated projects to address issues related to the regulation of segregated funds and mutual funds and financial planning activities. Work is also underway to develop an information sharing agreement.

CCIR is currently focusing harmonization efforts on two issues – a one-window approach for financial filings and the classification of different types of insurance. As part of CAPSA's ongoing commitment to pension

harmonization, initiatives such as uniform timeframes for settlement of pension benefits, uniform rules for flexible pension plans, a model actuarial information summary form and a review of the Association of Canadian Pension Management's uniform pension legislation proposal will be undertaken.

In conjunction with the Ministry of Finance, FSCO will undertake a statutorily required five-year review of the *Credit Unions and Caisses Populaires Act* in consultation with stakeholders in the credit union and other financial services sectors who may be affected by recommendations resulting from the review. Based on this review, FSCO will make recommendations to the Minister of Finance on amendments to improve the effectiveness and administration of the Act. Also in the credit unions sector, FSCO and the Deposit Insurance Corporation of Ontario will set up a single on-site verification process to replace current examination and inspection activities. In addition, the two regulators will establish a one-window filing process for credit unions that will reduce duplication and facilitate electronic filing. FSCO will also simplify procedures for issuance of securities by co-operatives.

In recent years, Ontario and the federal government have significantly reduced overlap and duplication in regulating the loan and trust industry. FSCO will assist with the effort to determine what further steps can be taken in this direction.

The Ontario government is continuing consultations on amendments to Ontario's *Pension Benefits Act*. The Ministry of Finance and FSCO jointly developed a consultation paper on harmonization and streamlining of pension administration and regulation. FSCO will continue to support the government's commitment to review pension legislation.

As outlined in the Progress Report, FSCO will address a number of the issues raised in the Discussion Paper on Regulation of Insurance Distribution and Co-ordination of Financial Services Regulation. These include licensing issues, such as proficiency standards for life insurance agents, consumer protection issues, such as point-of-sale disclosure, and the co-ordination of financial services regulation.

FSCO and the Ministry of Finance will consult with the insurance industry and consumer groups on proposed regulatory and legislative changes affecting the sector. Technical amendments to the Statutory Accident Benefits Schedule and other regulations, flowing from the two-year review of auto insurance legislation, will be developed. Also in the area of insurance, discussion papers will be released on the concept of the appointed actuary and on prudent person investment rules.

At present, FSCO takes part in nearly three dozen stakeholder committees to identify and address regulatory issues. To facilitate more focused dialogue, FSCO will put in place a streamlined and effective consultation process with the financial services industry, consumers and other stakeholders.

Promote compliance

The overwhelming majority of non-compliance is attributable to lack of understanding of requirements. FSCO will therefore enhance guidance to the industry through intensified communications activities. Our aim is to promote willing compliance while, at the same time, violations of legislative and regulatory requirements will be dealt with.

A key objective for FSCO is to ensure that the regulated sectors have a clear understanding of their obligations through publicly-available policies and procedures. FSCO will continue to publish policies, rules and decisions regularly and post this information on its website.

The Financial Services Tribunal will review its rules of practice and procedure as well as adopt and review policies and practice directions as required.

FSCO will work with stakeholders to implement a plan for the ongoing review of all previously published pension policies, which guide the application of

pension legislation. FSCO will also examine some major pension policy issues, including partial wind-ups, surplus policies, adverse amendments, investment disclosure requirements for defined contribution plans, plan governance, and risk-measurement criteria for monitoring funding. In addition, a series of focus groups will be held with pension stakeholders on operational matters such as common deficiencies in filings as identified by staff.

Following the recent consulting study on FSCO's rate filing process, FSCO will implement recommendations contained in a report on FSCO's rate and risk classification filing system.

FSCO will remain vigilant with respect to compliance and will investigate suspected violations and launch prosecutions where appropriate. Consumers will be advised of enforcement actions on a timely basis so they can make informed decisions. Information about enforcement activities will be posted on the FSCO website.

Strengthen FSCO as an organization

As an integrated regulator, FSCO has the potential to deliver better co-ordinated regulation, increased cost-effectiveness and stronger consumer protection. FSCO is committed to realizing this potential by capitalizing on its financial, technological and human resources and taking advantage of synergies among its constituent elements.

FSCO operates on a cost recovery basis. In consultation with stakeholders, FSCO will recommend to the Minister of Finance a fee and assessment structure that will fairly apportion costs among the regulated sectors.

To keep pace with the constantly changing financial services business, FSCO will continue to build staff expertise and knowledge through an ongoing program of staff development, including partnerships with industry. A comprehensive research and education plan will be prepared to strengthen the capabilities of FSCO employees in the sectors they regulate. Under this plan, FSCO will support in-house and external training opportunities.

The Financial Services Tribunal will also develop and implement an orientation and training policy, as well as position descriptions and performance evaluations for its members.

A training and development program called FUTURES will provide senior FSCO staff with the opportunity to demonstrate leadership on corporate and organizational projects. The program is intended to allow the future managers of FSCO to acquire the skills and experiences necessary to advance their career goals as well as FSCO's business objectives.

FSCO will continue to deploy technology to increase the efficiency and effectiveness of regulatory services. The wider use of technology will be explored in the issuance of lending licenses and regulatory approvals for credit unions. Automobile insurers will be offered the option of electronic filing of rates and other information.

The Office of the Insurance Ombudsman encourages the industry to take primary responsibility for dealing with consumer complaints. A complaint-handling protocol has been established in all insurance companies, and the Office becomes involved only after the company process has been completed. FSCO plans to expand this complaint resolution system to other regulated sectors.

Preliminary work indicates that the electronic tracking system used by the Ombudsman's Office for tracking insurance complaints can be adapted to the business needs of other areas. The Office will work with other FSCO branches to prepare a business case for a centralized tracking system to consolidate data FSCO-wide. In addition, the Office of the Ombudsman will develop a process for addressing complaints from external stakeholders about FSCO's operations.

Finally, with the consolidation of three distinct organizations, each with a unique tradition and history, into one organization, it will be important to develop a cohesive cultural identity for FSCO. To achieve this goal, all FSCO staff will be invited to participate in the development of corporate values and a cultural identity which fosters an efficient, effective and professional organization

Martha Milczynski
Acting Chair
Financial Services
Commission of Ontario

Dina Palozzi
Chief Executive Officer
Financial Services
Commission of Ontario

Acting Chair
Financial Services Tribunal
Superintendent of Financial Services

Legislative Changes/Regulatory Policies

Clarification - Same-Sex Spousal Benefits - Leshner Ruling Explained (Policy B100-800)

Released in December 1992, Policy B100-800 discusses the impact of the Ontario Human Rights Commission's decision dated August 31, 1992, in the Leshner case. In this case, the Board of Inquiry found that the denial of survivor benefits to Leshner's same-sex partner, pursuant to the terms of the Public Service Pension Plan, constituted a violation of the Ontario Human Rights Code. However, because the *Income Tax Act* (Canada) (the *ITA*) did not then permit the registration of pension plans that provided for same-sex benefits, the Board of Inquiry ordered that an "off-side" or "parallel" arrangement be established to provide survivor benefits to same-sex couples. The policy concluded:

Plans providing same sex survivor benefits will not be accepted for registration by the Pension Commission of Ontario, nor will amendments be accepted in that regard.

Due to recent court decisions which have considered the definition of "spouse" for purposes of the *ITA* [the Rosenberg decision (Ont. C.A.)] and the *Pension Benefits Act* [the OPSEU decision (Ont. Gen. Div.)], the final sentence of policy B100-800 is no longer accurate. **Pension plan texts and plan amendments providing for same-sex survivor benefits are acceptable for registration by the Financial Services Commission of Ontario.**

Please refer to Policy S500-901 (Same-Sex Spouse Survivor Benefits - The Trustees of the OPSEU Pension Plan v. Her Majesty the Queen et al.) for additional information. It was published in the April 1999 issue of FSCO's Pension Bulletin (Volume 8, Issue 1).

Clarification - LIF Explanation and Tables for Minimum and Maximum Withdrawal Percentages (Policy L050-500)

This policy, first released in December 1992 and amended in February 1994, provides a general description of the Ontario Life Income Fund (LIF).

Paragraph 10 on page three of this policy (under the heading "Minimum withdrawal formula") stated:

The planholder's age must be used as the basis for the withdrawal calculation. (Under RRIF rules a joint annuitant may be named. This allows for the calculation of the minimum withdrawal formula based on the spouse's age. This option is not available under the Ontario LIF.)

This paragraph is no longer accurate. It reflected the provisions of Schedule 1 (Life Income Fund Requirements) which was added to Regulation 909, R.R.O. 1990 ("the Regulation"), effective September 18, 1992.

The provisions of Schedule 1 have since been amended. More specifically, subsection 5(2) of Schedule 1 was amended by O. Reg. 665/94, effective October 28, 1994, to provide:

The amount of income paid out of the life income fund during the fiscal year must not be less than the minimum amount prescribed for registered retirement income funds under the Income Tax Act (Canada).

The minimum withdrawal rules applicable to RRIFs under the *Income Tax Act* (Canada) (the *ITA*) became applicable to Ontario LIFs at that time and negated the paragraph in Policy L050- 500 cited above. The current *ITA* allows the annuitant to elect to use his or her spouse's age in the minimum withdrawal calculation, so this election is permissible for an Ontario LIF.

For additional information about the minimum withdrawal calculation, please refer to Policy L050-650 (Minimum and Maximum Withdrawals, O. Reg. 909, Schedule 1), or contact the Registered Plans Division of Revenue Canada at 1-800-267-3100 or (613) 954-0419.

Enforcement Matters

Charges laid under the Pension Benefits Act

Thorco Equipment Ltd.

On May 24, 1999, Thorco Equipment Inc. and John Thordarson were each charged with breaching the terms of a probation order under section 72 of the *Provincial Offences Act* . The charges relate to a probation order made on March 4, 1997, pursuant to charges imposed under the *Pension Benefits Act* by the Ontario Provincial Court. The probation term was that restitution be made to the pension fund in the amount of $72,223.84 by March 31, 1999. Payments of only $4,000.00 were made. The first appearance with respect to these charges took place on June 29, 1999, at which time the Ontario Court of Justice scheduled a pre-trial for October 18, 1999.

Court cases concluded under the Pension Benefits Act

Hawker Siddeley Canada Inc.

On June 15, 1999, the Superior Court of Justice (Divisional Court) heard an appeal brought by the National Automobile, Aerospace, Transportation and General Workers Union of Canada (the CAW) with respect to the decision dated January 28, 1999, (reasons released February 17, 1999) of the Pension Commission of Ontario consenting to a distribution of surplus as proposed by the employer, Hawker Siddeley Canada Inc. The CAW settled the issue of surplus distribution with the employer on June 14, 1999. The only issue before the court was whether it had jurisdiction to deal with the PCO's decision refusing standing to the CAW on the surplus application. The court found that it would not deal with the standing issue on the ground that this issue was now moot. This decision has not been appealed.

Superintendent of Financial Services

Orders that pension plans be wound up - Section 69 of the *Pension Benefits Act*

Peoples Jewellers Limited Executive Pension Plan, Registration No. 0597666 (formerly C- 16089)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28; respecting the **Peoples Jewellers Limited Executive Pension Plan, Registration No. 0597666 (formerly C-16089)**, dated the 12th day of January, 1999.

TO: Deloitte & Touche Inc.
BCE Place
181 Bay Street
Suite 1400
Toronto, ON
M5J 2V1

Attention: Bruce Bando
Senior Vice-President
Administrator of the Peoples Jewellers Limited Executive Pension Plan

AND TO: Peoples Jewellers Limited
1440 Don Mills Road
Don Mills, ON
M3B 3M1

Attention: Roman Doroniak
Chief Financial Officer
Employers

ORDER

ON the 14th day of January, 1999, the Superintendent of Financial Services issued a **Notice of Proposal to make an Order** dated the 12th day of January, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employer to wind up in whole the **Peoples Jewellers Limited Executive Pension Plan, Registration No. 0597666 (formerly C-16089)**, effective the 3rd day of March, 1993.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the"Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Peoples Jewellers Limited Executive Pension Plan, Registration No. 0597666 (formerly C-16089)** be wound up in whole, effective the 3rd day of March, 1993, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund; and
2. The employer failed to make contributions to the pension fund as required by this Act or the regulations.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

KPMG Actuarial, Benefits and Compensation Inc.
Suite 3300, Commerce Court West
P.O. Box 31, Stn Commerce Court
Toronto, ON
M5L 1B2

Attention: Michael Creber
Senior Vice President
Receiver

Royal Trust
Royal Trust Tower
77 King Street West, 7th Floor
Toronto, ON
M5W 1P9

Attention: Lorraine Hibbert
Manager, Client Service
Custodian

DATED at North York, Ontario this first day of March, 1999.

K. David Gordon
Director (Acting),
Pension Plans Branch
by delegated authority from
Dina Palozzi,
Superintendent of Financial Services

The Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28; respecting the **Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)**, dated the 29th day of January, 1999;

TO: The Manufacturers Life Insurance Company
500 King Street North
Waterloo, Ontario
N2J 4C6

Attention: Karen Osborne
Discontinuance Underwriter
Administrator of The Pension Plan for Employees of Trenton Machine Tool Inc.

AND TO: Trenton Machine Tool Inc.
Douglas Drive
P.O. Box 698
Trenton, Ontario
K8V 5W6

Attention: C. Clement
Office Manager
Employers

ORDER

ON the 1st day of February, 1999, the Superintendent issued a **Notice of Proposal to make an Order** dated the 29th day of January, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employer to wind up in whole **The Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)**.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("the Tribunal") by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that **The Pension Plan for Employees of Trenton Machine Tool Inc., Registration No. 0589028 (formerly C-15106)** be wound up in whole, effective October 31, 1995, for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 69(2) of the Act, to give notice of this Order to the following persons by transmitting a copy hereof:

Coopers & Lybrand Limited
145 King Street West
Box 126 Postal Station A
Toronto, Ontario
M5W 1A2

Attention: James S. Coatsworth
Senior Vice President
Trustee in Bankruptcy of Trenton Machine Tool Inc.

DATED at North York, Ontario this 18th day of March, 1999.

K. David Gordon
Director (Acting),
Pension Plans Branch
by delegated authority from
Dina Palozzi,
Superintendent of Financial Services

Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28; respecting the **Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413**, dated the 19th of February, 1999;

TO: The Mutual Life Assurance Company of Canada
227 King Street West
Waterloo, Ontario
N2J 4C5

Attention: Ms. Cathy Law
Client Services Representative
Administrator of the Registered Pension Plan for Employees of Custom Windows Limited

AND TO: Custom Windows Limited
c/o 1125 Colborne Street East
Brantford, Ontario
N3T 5M1

Attention: Ms. Cathy Tompkins
Office Manager
Employer

ORDER

ON the 22nd day of February, 1999, I issued a **Notice of Proposal to make an Order** dated the 19th day of February, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employer to wind up in whole the **Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the"Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Registered Pension Plan for Employees of Custom Windows Limited, Registration No. 0977413** be wound up in whole, effective November 7, 1996, for the following reasons:

1. There has been a cessation or suspension of employer contributions to the pension plan fund.
2. The employer has failed to make contributions to the pension fund as required by the *Pension Benefits Act* and the Regulations thereunder.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the pension plan have ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of reorganization of the employer.
5. All or a significant portion of the business carried on by the employer has been discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Scott, Pichelli & Graci Ltd.
77 Hunter Street East
Hamilton, Ontario
L8N 1M4

Attention: Mr. J. Paul Graci
Employer's Trustee in Bankruptcy

AND
Industrial Wood & Allied Workers of Canada Local 500
405 10th Street
Hanover, Ontario
N4M 1P7

Attention: Mr. Bruce Weber
Employees' Union

DATED at North York, Ontario this 13th day of April, 1999.

K. David Gordon
Director (Acting),
Pension Plans Branch
by delegated authority from
Dina Palozzi,
Superintendent of Financial Services

Designated Employees of Brown & Collett Ltd., Registration No. 0586677 (previously C-14839)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Designated Employees of Brown & Collett Ltd., Registration No. 0586677 (previously C-14839)**, dated the 19th of February, 1999;

TO: Deloitte & Touche Inc.
BCE Place
181 Bay Street
Suite 1400
Toronto, ON
M5J 2V1

Attention: Bruce Bando, CA
Vice-President

Administrator of the Pension Plan for Designated Employees of Brown & Collett Ltd.

AND TO: Brown & Collett Ltd.
2365 Matheson Blvd.
Mississauga, ON
L4W 5C2

Attention: R.W. Bernard
Controller

Employer

ORDER

ON the 23rd day of February, 1999, I issued a **Notice of Proposal to make an Order** dated the 19th day of February, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employer to wind up in whole the **Pension Plan for Designated Employees of Brown & Collett Ltd., Registration No. 0586677 (previously C-14839).**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the"Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Pension Plan for Designated Employees of Brown & Collett Ltd., Registration No. 0586677 (previously C-14839)** be wound up in whole, effective March 1, 1996, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the Bankruptcy and Insolvency Act (Canada).
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Price Waterhouse Limited
5700 Yonge Street
Suite 1900
North York, ON
M4M 4K7

Attention: Craig Munroe

Receiver and Trustee in Bankruptcy

DATED at North York, Ontario this 27th day of April, 1999.

K. David Gordon
Director (Acting)
Pension Plans Branch
by delegated authority from
Dina Palozzi
Superintendent of Financial Services

Westinghouse Canada Inc. Pension Plan, Registration No. C-10579

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the Superintendent of Pensions to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c.P.8, respecting the **Westinghouse Canada Inc. Pension Plan, Registration No. C-10579**, dated the 2nd day of May, 1995

TO: **CBS CANADA CO.**
11 Stanwix Street
Pittsburgh, Pennsylvania
15222-1384
U.S.A.

Attention: Julie Forsythe

Administrator and Employer of the Westinghouse Canada Inc. Pension Plan

ORDER

ON the 2nd day of May, 1995, the Superintendent of Pensions issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), to the Administrator and Employer to wind up in part the **Westinghouse Canada Inc. Pension Plan, Registration No. C-10579** (the "Notice").

ON May 31, 1995, counsel for Westinghouse Canada Inc. delivered notice in writing requiring a hearing to the Pension Commission of Ontario (the "Commission") with respect to the Notice.

ON September 19, 1995, counsel for Westinghouse Canada Inc. and counsel for the National Automobile, Aerospace and Agricultural Canada filed an agreement with the Commission, in which they agreed to adjourn the proceeding *sine die*.

ON September 25, 1995, counsel for the Superintendent of Pensions (the "Superintendent") filed a letter with the Commission which indicated that the Superintendent did not oppose adjourning the proceeding *sine die*.

ON September 28, 1995, the Commission adjourned the proceeding *sine die*.

ON June 25, 1998, CBS Canada Co. was incorporated as a corporation under the laws of Nova Scotia; and in August of 1998, Westinghouse Canada Inc. transferred certain assets including the Westinghouse Canada Inc. Pension Plan to CBS Canada Co.

ON September 16, 1998, the Commission issued a Notice of Pre-Hearing Conference scheduling the pre-hearing conference for January 27, 1999.

ON December 3, 1998, counsel for Westinghouse Canada Inc. (now CBS Canada Co.) *withdrew* its request for hearing.

NO other Notice requiring a hearing was delivered to the Commission within the time prescribed by subsection 89(6).

IT IS THEREFORE HEREBY ORDERED THAT THE Westinghouse Canada Inc. Pension Plan, Registration No. C-10579 be wound up in part effective June 30, 1991 in respect of those members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of its plant on Beach Road in Hamilton, Ontario (the "Beach Road plan") on or about June 30, 1991, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("Westinghouse') is the employer and administrator of the Plan.
2. By asset transfer agreement dated as of December 29, 1986 (the "1986 agreement"), Westinghouse sold the assets of its Power Transformer business carried on at the Beach Road plant. The purchaser was 153703 Canada Inc., the name of

which was subsequently changed to Transelectrix Technology Inc. ("TTI"). Westinghouse was a shareholder of TTI.

3. The 1986 agreement closed on or about December 31, 1986. As of the closing date, certain Westinghouse employees who were members of the Plan became employees of TTI. Pursuant to the 1986 agreement, Westinghouse was responsible for providing the accrued benefits for members of the Plan who became employees of TTI up to the closing date. TTI established a pension plan (the "TTI" Plan) for its employees in respect of service on and after January 1, 1987.
4. Pursuant to the 1989 Agreement referred to above, ABB purchased the assets of the Beach Road plan effective on or about June 23, 1989. As a result of the transaction, certain TTI employees became employees of ABB (the "Transferred Employees"). Pursuant to the 1989 agreement, TTI was responsible for providing the accrued benefits of the Transferred Employees under TTI's pension plan up to the closing date of the 1989 agreement and ABB was responsible for pension benefits of the Transferred Employees accruing from and after the closing date of the 1989 agreement.
5. Pursuant to section 29 of the Pension Benefits Act, R.S.O. 1980, c.373, as amended and section 80 of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the {"Act"), the employment by Westinghouse of the Transferred Employees is deemed not to be terminated by reason of the 1987 agreement or the 1989 agreement.
6. On or about June 30, 1991, ABB closed the Beach Road plant. The TTI Plan was amended to provide that, effective June 23, 1989, ABB replaced TTI as the employer of the TTI Plan. ABB partially wound up the TTI Plan in respect of those employees, including Transferred Employees, whose employment with ABB was terminated as a result of the discontinuance of the Beach Road plant.
7. Westinghouse ceased to contribute to the plan in respect of the Transferred Employees on or about the closing date of the 1986 agreement, within the meaning of clause 69(1)(a) of the Act.
8. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of ABB's Beach Road plant, within the meaning of clause 69(1)(d) of the Act.
9. All or a significant portion of the business carried on by ABB at the Beach Road plant has been discontinued, within the meaning of clause 69(1)(e) of the Act.
10. Such further and other reasons as may come to my attention.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

National Automobile, Aerospace and
Agricultural Implement Workers Union of Canada
(CAW - Canada)
205 Placer Court
North York, Ontario M2H 3H9

Attention: Mr. Dick Barry, CAW-UE
Coordinator
Union

All members and former members who became employees of ABB pursuant to the Asset Purchase Agreement dated as of June 23, 1989 between TTI and ABB, and who ceased to be employed by ABB as a result of its closure of the plant on Beach Road in Hamilton, Ontario, on or about June 30, 1991.

DATED at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi
Superintendent & CEO,
Financial Services Commission of Ontario

Westinghouse Canada Inc. Pension Plan, Registration No. C-10579

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the Superintendent of Pensions to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c.P.8 respecting the **Westinghouse Canada Inc. Pension Plan, Registration No. C-10579**, dated the 2nd day of May, 1995;

TO: **CBS CANADA CO.**
11 Stanwix Street
Pittsburgh, Pennsylvania
15222-1384
U.S.A.
Attention: Julie Forsythe
Administrator and Employer of the Westinghouse Canada Inc. Pension Plan

ORDER

ON the 2nd day of May, 1995, the Superintendent of Pensions issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), to the Administrator and Employer to wind up in part the **Westinghouse Canada Inc. Pension Plan, Registration No. C-10579** (the "Notice").

ON May 31, 1995, counsel for Westinghouse Canada Inc. delivered notice in writing requiring a hearing to the Pension Commission of Ontario (the "Commission") with respect to the Notice.

ON September 19, 1995, counsel for Westinghouse Canada Inc. and counsel for the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada filed an agreement with the Commission, in which they agreed to adjourn the proceeding *sine die*.

ON September 25, 1995, counsel for the Superintendent of Pensions (the "Superintendent") filed a letter with the Commission which indicated that the Superintendent did not oppose adjourning the proceeding *sine die*.

ON September 28, 1995, the Commission adjourned the proceeding *sine die*.

ON June 25, 1998, CBS Canada Co. was incorporated as a corporation under the laws of Nova Scotia; and in August of 1998, Westinghouse Canada Inc. transferred certain assets including the Westinghouse Canada Inc. Pension Plan to CBS Canada Co.

ON September 16, 1998, the Commission issued a Notice of Pre-Hearing Conference scheduling the pre-hearing conference for January 27, 1999.

ON December 3, 1998, counsel for Westinghouse Canada Inc. (now CBS Canada Co.) withdrew its request for a hearing.

NO other Notice requiring a hearing was delivered to the Commission within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Westinghouse Canada Inc. Pension Plan, Registration No. C-10579 be wound up in part effective October 1, 1992 in respect of those members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of part of its business at its London, Ontario division on or about October 1, 1992, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("Westinghouse") is the employer and administrator of the Plan.
2. Pursuant to the 1989 agreement referred to above, certain Westinghouse employees who were members of the Plan became employees of ABB (the "Transferred Employees"). Westinghouse is responsible for providing the accrued benefits of the Transferred Employees up to the effective date of the sale under the Plan. ABB established a pension plan for the Transferred Employees in respect of service on and after the effective date of the sale.

3. Pursuant to section 80 of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), the employment of the Transferred Employees by Westinghouse is deemed not to be terminated by reason of the 1989 agreement.
4. On or about October 1, 1992, ABB discontinued its London division. ABB partially wound up its pension plan in respect of those employees, including Transferred Employees, whose employment with ABB was terminated as a result of the discontinuance of the London division.
5. Westinghouse ceased to contribute to the Plan in respect of the Transferred Employees on or about the effective date of the sale to ABB, within the meaning of clause 69(1)(a) of the Act.
6. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of ABB's London division, within the meaning of clause 69(1)(d) of the Act.
7. All or a significant portion of the business carried on by ABB's London division has been discontinued, within the meaning of clause 69(1)(e) of the Act.
8. Such further and other reasons as may come to my attention.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

National Automobile, Aerospace and
Agricultural Implement Workers Union of Canada
(CAW - Canada)
205 Placer Court
North York, Ontario
M2H 3H9

Attention: Mr. Dick Barry,
CAW-UE Coordinator
Union

All members and former members of the Plan who became employees of ABB pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of part of its business at its London, Ontario division on or about October 1, 1992.

DATED at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi
Superintendent & CEO
Financial Services Commission of Ontario

Westinghouse Canada Inc. Pension Plan
No. C-10579

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the Superintendent of Pensions to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c.P.8, respecting the **Westinghouse Canada Inc. Pension Plan, Registration No. C-10579**, dated the 2nd day of May, 1995;

TO: **CBS CANADA CO.**
11 Stanwix Street
Pittsburgh, Pennsylvania
15222-1384
U.S.A.
Attention: Julie Forsythe
Administrator and Employer of the Westinghouse Canada Inc. Pension Plan

ORDER

ON the 2nd day of May, 1995, the Superintendent of Pensions issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), to the Administrator and Employer to wind up in part the **Westinghouse Canada Inc. Pension Plan, Registration No. C-10579** (the "Notice").

ON May 31, 1995, counsel for Westinghouse Canada Inc. delivered notice in writing requiring a hearing to the Pension Commission of Ontario (the "Commission") with respect to the Notice.

ON September 19, 1995, counsel for Westinghouse Canada Inc. and counsel for the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada filed an agreement with the Commission, in which they agreed to adjourn the proceeding *sine die*.

ON September 25, 1995, counsel for the Superintendent of Pensions (the "Superintendent") filed a letter with the Commission which indicated that the Superintendent did not oppose adjourning the proceeding *sine die*.

ON September 28, 1995, the Commission adjourned the proceeding *sine die*.

ON June 25, 1998, CBS Canada Co. was incorporated as a corporation under the laws of Nova Scotia; and in August of 1998, Westinghouse Canada Inc. transferred certain assets which included the Westinghouse Canada inc. Pension Plan to CBS Canada Co.

ON September 16, 1998, the Commission issued a Notice of Pre-Hearing Conference scheduling the pre-hearing conference for January 27, 1999.

ON December 3, 1998, counsel for Westinghouse Canada Inc. (now CBS Canada Co.) withdrew its request for a hearing.

NO other Notice requiring a hearing was delivered to the Commission within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Westinghouse Canada Inc. Pension Plan, Registration No. C-10579 be wound up in part effective August 11, 1994 in respect of those members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of part of its business at its Burlington, Ontario division on or about August 11, 1994, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("Westinghouse") is the employer and administrator of the Plan.
2. Pursuant to the 1989 agreement referred to above, certain Westinghouse employees who were members of the Plan became employees of ABB (the "Transferred Employees"). Westinghouse is responsible for providing the accrued benefits of the Transferred Employees up to the effective date of the sale under the Plan. ABB established a pension

plan for the Transferred Employees in respect of service on and after the effective date of the sale.

3. Pursuant to section 80 of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), the employment of the Transferred Employees by Westinghouse is deemed not to be terminated by reason of the 1989 agreement.
4. On or about August 11, 1994, ABB discontinued part of its business at its Burlington division. Effective August 11, 1994, ABB issued a notice of proposal to wind up its pension plan in full with respect to those employees, including Transferred Employees, whose employment with ABB was terminated as a result of the discontinuance of part of its business at the Burlington division.
5. Westinghouse ceased to contribute to the Plan in respect of the Transferred Employees on or about the effective date of the sale to ABB, within the meaning of clause 69(1)(a) of the Act.
6. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of part of ABB's business at ABB's Burlington division, within the meaning of clause 69(1)(d) of the Act.
7. A significant portion of the business carried on by ABB at its Burlington division has been discontinued, within the meaning of clause 69(1)(e) of the Act.
8. Such further and other reasons as may come to my attention.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

National Automobile, Aerospace and Agricultural Implement
Workers Union of Canada (CAW - Canada)
205 Placer Court
North York, Ontario
M2H 3H9

Attention: Mr. Dick Barry,
CAW-UE Coordinator
Union

All members and former members of the Plan who became employees of ABB pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of part of its business at its Burlington, Ontario division on or about August 11, 1994.

DATED at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi

Superintendent & CEO,

Financial Services Commission of Ontario

Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. C-9356,

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8;

AND IN THE MATTER OF a Proposal of the Superintendent of Pensions to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c.P.8, respecting the **Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. C-9356**, dated the 23rd day of August, 1993;

TO: **CBS CANADA CO.**
11 Stanwix Street
Pittsburgh, Pennsylvania
15222-1384
U.S.A.
Attention: Julie Forsythe
Administrator and Employer of the Westinghouse Canada Inc.Pension Plan

ORDER

ON the 23rd day of August, 1993, the Superintendent of Pensions issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act"), to the Administrator and Employer to wind up in part the **Westinghouse Canada Consolidated Pension Plan, Registration No. C-9356** (the "Notice").

ON September 17, 1993, counsel for Westinghouse Canada Inc. delivered notice in writing requiring a hearing to the Pension Commission of Ontario (the "Commission") with respect to the Notice.

ON the 10th day of November, 1994, the Commission made an Order adjourning the hearing *sine die* on terms.

ON June 25, 1998, CBS Canada Co. was incorporated as a corporation under the laws of Nova Scotia; and in August of 1998, Westinghouse Canada Inc. transferred certain assets which included the Westinghouse Canada Inc. Consolidated Pension Plan to CBS Canada Co.

ON December 3, 1998, counsel for Westinghouse Canada Inc.(now CBS Canada Co.) withdrew its request for hearing with the Pension Commission of Ontario.

NO other Notice requiring a hearing was delivered to the Commission within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. C-9356** be wound up in part in respect of those members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, and who ceased to be employed by ABB as a result of the discontinuance of its London, Ontario division on or about October 1, 1992, for the following reasons:

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("Westinghouse") is the employer and administrator of the Plan.
2. Pursuant to the Agreement referred to above, certain Westinghouse employees who were members of the Plan became employees of ABB (the "Transferred Employees"). Westinghouse is responsible for providing the accrued benefits of the Transferred Employees up to the effective date of the sale under the Plan. ABB established a pension plan for the Transferred Employees in respect of service on and after the effective date of the sale.
3. Pursuant to section 80 of the Pension Benefits Act, the employment of the Transferred Employees by Westinghouse is deemed not to be terminated by reason of the Agreement.
4. On or about October 1, 1992, ABB closed its London division and partially wound up its pension plan in respect of those employees, including

Transferred Employees, whose employment with ABB was terminated as a result of the closure.

5. Westinghouse ceased to contribute to the Plan in respect of the Transferred Employees on or about the effective date of the sale to ABB, within the meaning of clause 69(1)(a) of the Act.
6. A significant number of Transferred Employees ceased to be employed by ABB and Westinghouse as a result of the discontinuance of ABB's London division, within the meaning of clause 69(1)(d) of the Act.
7. All or a significant portion of the business carried on by ABB at its London division has been discontinued, within the meaning of clause 69(1)(f) of the Act.
8. Such further and other reasons as may come to my attention.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

All members and former members of the Plan who became employees of Asea Brown Boveri Inc. ("ABB") pursuant to an Asset Purchase Agreement dated as of February 14, 1989 between Westinghouse Canada Inc., Transelectrix Technology Inc., and ABB, as amended, and who ceased to be employed by ABB as a result of the discontinuance of its London, Ontario division on or about October 1, 1992.

DATED at North York, Ontario, this 13th day of May, 1999.

Dina Palozzi
Superintendent & CEO,
Financial Services Commission of Ontario

The Canada Machinery Corporation Salaried Employees Pension Plan, Registration No. 0910836 (previously C-14249)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, respecting **The Canada Machinery Corporation Salaried Employees Pension Plan, Registration No. 0910836 (previously C-14249)**, dated the 26th day of March, 1999;

TO: Ernst & Young Inc.
Ernst & Young Tower
Toronto-Dominion Centre
P.O. Box 251
Toronto, ON
M5K 1J7

Attention: Brian Denega
Senior Vice-President
Administrator of The Canada Machinery Corporation Salaried Employees Pension Plan

AND TO: Canada Machinery Corporation
81 Curlew Drive
North York, ON
M3A 2P8

Attention: J.L. Campbell
President
Employer

ORDER

ON the 1st day of April, 1999, I issued a **Notice of Proposal to make an Order** dated the 26th day of March, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employer to wind up in whole **The Canada Machinery Corporation Salaried Employees Pension Plan, Registration No. 0910836 (previously C-14249).**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the"Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that **The Canada Machinery Corporation Salaried Employees Pension Plan, Registration No. 0910836 (previously C-14249)** be wound up in whole, effective December 31, 1988, for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund.

DATED at North York, Ontario this 26th day of May, 1999.

K. David Gordon
Director
Pension Plans Branch
by delegated authority from
Dina Palozzi
Superintendent of Financial Services

Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration No. 240622 (formerly C-5975)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up in Part of the **Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration No. 240622 (formerly C-5975)**;

TO: **COOPER INDUSTRIES (CANADA) INC.**
P.O. Box 4446
Houston, Texas
U.S.A. 77210

Attention: Mr. Donald P. Ingols
Vice-President

Employer and Administrator of the Retirement Plan for Salaried Employees of Cooper Canada - Plan A

ORDER

ON the 2nd day of July, 1998, I issued a **Notice of Proposal to Make an Order** pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act"), to the Administrator and Employer to wind up in part the Retirement Plan for Salaried Employees of Cooper Canada, **Registration No. 240622 (formerly C-5975)** (the "Notice").

ON the 6th day of August, 1998, counsel for Cooper Industries (Canada) Inc. delivered notice in writing requiring a hearing to the Financial Services Tribunal (the "Tribunal") with respect to the Notice.

ON the 26th day of October, 1998, the Tribunal conducted a pre-hearing conference.

ON March 3, 1999, counsel for Cooper Industries (Canada) Inc. withdrew its request for hearing with the Tribunal.

NO other Notice requiring a hearing was delivered to the Tribunal within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Retirement Plan for Salaried Employees of Cooper Canada, Registration No. 240622 (formerly C-5975) be wound up in part in respect of those members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. ("Cooper") at its Port Hope location and who ceased to be employed by Cooper effective from March 26, 1991 to March 30, 1992, or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, as a result of: (i) the discontinuance of part of the business of Cooper; (ii) the reorganization of the business of Cooper; or (iii) the discontinuance of all or a significant portion of the business carried on by Cooper at its Port Hope, Ontario location, for the following reasons:

1. Cooper is the employer and administrator of the Plan.
2. On March 26, 1991, Cooper announced to its employees that it intended to close its manufacturing plant in Port Hope, Ontario.
3. On March 30, 1992, all of the business carried on by Cooper at its Port Hope location was discontinued and the plant was closed.
4. A significant number of members of the Plan ceased to be employed by Cooper as a result of the discontinuance of all or part of its business between March 26, 1991 and March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.

5. A significant number of members of the Plan ceased to be employed by Cooper as a result of the reorganization of its business between March 26, 1991 and March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.
6. All or a significant portion of the business carried on by Cooper at its Port Hope, Ontario location was discontinued between March 26, 1991 and March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, within the meaning of clause 69(1)(d) of the Act.
7. Such further and other reasons that may come to my attention.

IT IS FURTHER HEREBY ORDERED that the Administrator file a partial wind up report with the Superintendent of Financial Services within 4 months and 21 days from the date this Order is served upon the employer and administrator.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

All members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. at its Port Hope, Ontario location and who ceased to be employed by Cooper effective from March 26, 1991 to March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later.

DATED at Toronto, Ontario, this 22nd day of June, 1999.

Dina Palozzi
Superintendent & CEO,
Financial Services Commission of Ontario

Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218)**, dated the 10th day of May, 1999;

TO: Price Waterhouse Limited
Suite 1100
One Robert Speck Parkway
Mississauga, ON
L4Z 3M3
Attention: Ms. Patti Hamilton
Administrator
Administrator of the Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc.

AND TO: Frink Environmental Inc.
c/o 66 Wellington Street West, Suite 2901
Toronto Dominion Bank Tower, TD Centre
Toronto, ON M5K 1G8
Attention: Mr. David Lowry

Eastern Steel Products Ltd.
c/o 66 Wellington Street West, Suite 2901
Toronto Dominion Bank Tower, TD Centre
Toronto, ON M5K 1G8
Attention: Mr. David Lowry

Hamilton Gear Inc.
c/o 66 Wellington Street West, Suite 2901
Toronto Dominion Bank Tower, TD Centre
Toronto, ON M5K 1G8
Attention: Mr. David Lowry
Employers

ORDER

ON the 12th day of May, 1999, I issued a **Notice of Proposal to make an Order** dated the 10th day of May, 1999, pursuant to subsection 69(1) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act"), to the Administrator and to the Employers to wind up in whole the **Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218).**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the"Tribunal"), by the Administrator and/or the Employers within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the **Pension Plan for Salaried Employees of Frink Environmental & Hamilton Gear Inc., Registration No. 337691 (previously C-10218)** be wound up in whole, effective the 20th day of September, 1994, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employers are bankrupt within the meaning of the Bankruptcy Act (Canada).
3. A significant number of members of the plan ceased to be employed by the employers as a result of the discontinuance of all or part of the business of the employers or as a result of reorganization of the business of the employers.
4. All or a significant portion of the business carried on by the employers at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Ernst & Young Inc.
Suite 600, 175 Commerce Valley Drive West
Thornhill, ON
L3T 7P6

Attention: Mr. Joseph Pernica
Senior Vice-President
Receiver and Trustee in Bankruptcy

DATED at Toronto, Ontario this 9th day of July, 1999.

K. David Gordon
Director
Pension Plans Branch
by delegated authority from
Dina Palozzi
Superintendent of Financial Services

Appointments of Administrators - Section 71 of the PBA

The Superintendent of Financial Services appointed third party administrators pursuant to subsection 71(1) of the *PBA* to wind up the plan in whole or in part.

1) Arthur Andersen Inc. appointed as administrator of Alumiprime Windows Limited Hourly Employees Pension Plan, PN C1021005, effective July 9, 1999
2) Price Waterhouse appointed as administrator of JPE Canada Inc. Employees Pension Plan, PN C0694570, effective June 30, 1999
3) Manufacturers Life appointed as administrator of Tee-Com Electronics Inc. Employees Pension Plan, PN C9050750, effective May 5, 1999
4) Canada Life appointed as administrator of C.J. Power Automatic Tools Inc. Employees Pension Plan, PN 0579987, effective March 23, 1999

Consents to refunds of employer overpayments - Subsection 78(4) of the PBA

Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8; as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Consenting to a payment out of the **Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344;**

TO: Wm. H. McGee & Co. of Canada Ltd.
1200 - 48 Yonge Street
Toronto, Ontario
M5E 1G6
Attention: Debra J. Seminoff
Vice-President & Treasurer
Employer and Administrator of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd.

ORDER

WHEREAS on January 14th, 1999 the Superintendent sent to those persons whose interest may be affected by this order, by first class mail, a **Notice of Proposal to make an Order** consenting to the payment out of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344 (the "Plan") of the sum of $43,850, pursuant to subsection 78(4) of the Pension Benefits Act, R.S.O. 1990, c. p.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act"), (the "Act").

AND

WHEREAS, under section 112 of the *Act*, notice is deemed to have been given of that order on the seventh day after the mailing of a letter containing such notice,

AND

WHEREAS the thirty day time period allowed for a request a request for a hearing in this matter, under sub-section 89(6) of the *Act*, has lapsed, and the Registrar of the Financial Services Tribunal has confirmed that no request for a hearing has been received.

NOW THEREFORE TAKE NOTICE that the Superintendent hereby consents to the payment out of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., Registration No. 328344 (the "Plan") of the sum of $43,850.

I MAKE THE ORDER FOR THE FOLLOWING REASONS:

1. Wm. H. McGee & Co. of Canada Ltd. (the Employer) is the sponsor of the Pension Plan for Employees of Wm. H. McGee & Co. of Canada Ltd., registration #328344.

2. A Valuation Report in connection with the Pension Plan, effective December 31, 1997 was made in July of 1998 and thereafter the Employer determined that the payments made into the Pension Plan in 1998 were overpayments.

3. The Employer applied to the Superintendent for consent to a refund of the overpayments made to the Pension Plan in 1998 by the Employer. Notice of that application was given to those persons whose interest may be affected by this proposal. The application appears to comply with sub-section 78(4) of the Act.

DATED at Toronto, Ontario this 1st day of March, 1999.

K. David Gordon
Director (Acting),
Pension Plans Branch
by delegated authority from
Dina Palozzi,
Superintendent of Financial Services

Hospitals of Ontario Pension Plan, Registration No. 346007

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Consenting to a payment out of the **Hospitals of Ontario Pension Plan, Registration No. 346007**;

TO: Board of Trustees of Hospitals of Ontario Pension Plan
Administrative Services
1 Toronto Street, Suite 1400
Toronto, Ontario
M5C 3B2
Attention: Ron Laffin
Policy Analyst
Administrator of the Hospitals of Ontario Pension Plan (the "Administrator")

ORDER

WHEREAS on February 17th, 1999 the Superintendent sent to the Board of Trustees of Hospitals of Ontario Pension Plan by first class mail, a **Notice of Proposal to Make an Order**:

(1) pursuant to subsection 78(4) of the Act to consent to an application for a refund of $40,659.57 to Pembroke Civic Hospital, a participating employer under the **Hospitals of Ontario Pension Plan, Registration No. 346007** (the "Plan"); and

(2) pursuant to section 105 of the Act to extend the time limit, specified under subsection 78(4) of the Act, for filing the application; and

(3) to waive the requirements that a formal application be made and pursuant to subsection 112(3) of the Act, to require notice to be given to Plan members prior to granting consent, by requiring the administrator to serve a copy of Notice of Proposal on the trade unions which represent the majority of the Plan members.

AND

WHEREAS, under section 112 of the Pension Benefits Act (the "Act"), notice is deemed to have been given of that Notice of Proposal to Make an Order on the seventh day after the mailing of a letter containing such notice,

AND

WHEREAS the thirty day time period allowed for a request for a hearing in this matter, under sub- section 89(6) of the Act, has lapsed, and the Registrar of the Financial Services Tribunal has confirmed that no request for a hearing has been received.

AND

WHEREAS the Administrator has confirmed in writing that a copy of the Notice of Proposal was served on the trade unions which represent the majority of the Plan members.

NOW THEREFORE TAKE NOTICE that the Superintendent hereby:

i) consents, pursuant to subsection 78(4) of the Act to the application for a refund of $40,659.57 to Pembroke Civic Hospital, a participating employer under the **Hospitals of Ontario Pension Plan, Registration No. 346007**;

ii) pursuant to section 105 of the Act, extends the time limit specified under subsection 78(4) of the Act for filing the application; and

iii) waives the requirements that a formal application be made.

THIS ORDER IS MADE FOR THE FOLLOWING REASONS:

1. The Administrator of the Plan has represented by letter dated November 18, 1998 that an overpayment to the Pension Fund of the Plan was made by Pembroke Civic Hospital, a participating employer in the Plan in 1997 and 1998. The Administrator has represented that an overpayment of $38,047.29 occurred in 1997 and an overpayment of $2,612.28 occurred in 1998. The

application is for a refund of $40,659.57 which represents the total of the overpayments that occurred in 1997 and 1998 (the "Overpayments".)

2. The Administrator of the Plan has represented that the Overpayments were discovered in a financial reconciliation which occurred when the Pembroke Civic Hospital ceased to participate in the Plan. Since the error for the fiscal year 1997 was not discovered in the 1997 fiscal year, an application for a refund of the overpayment that occurred in 1997 could not be made in 1997.
3. The quantum of the Overpayments is insignificant when compared with the assets of the Pension Fund and with the surplus on an ongoing basis in the Pension Fund.
4. Since the Plan members are so numerous and located in so many different locations across the province, it is reasonable to authorize the giving of notice of the application by requiring the administrator to serve the trade unions which represent the majority of the Plan members with a copy of the Notice of Proposal.

DATED at Toronto, Ontario this 7th day of June, 1999.

K. David Gordon
Director
Pension Plans Branch
by delegated authority from
Dina Palozzi
Superintendent of Financial Services

Declaration that the Pension Benefits Guarantee Fund applies to pension plans - Subsection 83(1) of the PBA

Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997. S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852**;

TO: KPMG Inc.
(formerly Peat Marwick Thorne Inc.)
Suite 3300, Commerce Court West
P.O. Box 31, Stn Commerce Court
Toronto, ON
M5L 1B2
Attention: Michael Creber, Senior Vice President
Administrator, Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852

AND TO: Ernst & Young Inc.
P.O. Box 251, 22nd Floor
Ernst & Young Tower
Toronto Dominion Centre
Toronto, ON
M5K 1J7
Trustee in Bankruptcy

AND TO: Amalgamated Clothing & Textile Workers Union AFL - C10, Local 1464
(formerly Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351)
34 Madison Avenue
Toronto, ON
M5R 3N6
Union

AND TO: Barrymore Carpet Division of Carpita Corporation
7075 Ordan Drive, Unit A
Mississauga, ON
L5T 1T1
Attention: Leslie MacTaggart
Manager Human Resources/Payroll
Employer

DECLARATION

WHEREAS:

1. The Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852 (the "Pension Plan") is registered under the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997 , S.O. 1997, c.28 (the "Act"); and
2. The Superintendent of Financial Services ordered the Pension Plan wound up effective June 29, 1990; and
3. The Superintendent of Pensions appointed KPMG Inc., formerly Peat Marwick Thorne Inc. as the administrator (the "Administrator") of the Pension Plan on September 13, 1990; and
4. A notice of proposal to make a declaration (the "Notice of Proposal") that the Pension Benefits

Guarantee Fund (the"Guarantee Fund") applies to the Pension Plan was served by the Superintendent of Financial Services pursuant to section 89 of the Act on March 29, 1999; and

5. No written representations were received by the Financial Services Tribunal requesting a hearing within thirty days after service of the Notice of Proposal;

NOW THEREFORE TAKE NOTICE that the Superintendent of Financial Services declares pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

(a) The wind up report filed by the Administrator indicates that the Wind Up Ratio (of assets to liabilities) of the Pension Plan is approximately 65%;

(b) The employer under the Pension Plan is bankrupt and the Administrator has been informed by the Trustee in Bankruptcy that there are no funds available from the Estate of Barrymore Carpet Division of Carpita Corporation to make a payment to the Pension Plan.

DATED at North York, Ontario, the 28th day of May, 1999.

Dina Palozzi
Superintendent of Financial Services

Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 respecting the **Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)**;

TO: Arthur Andersen Inc.
P.O. Box 29
Toronto-Dominion Centre
1900-79 Wellington Street West
Toronto, ON
M5K 1H1
Attention: David R. Kearney,
Administrator, Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)

AND TO: PricewaterhouseCoopers Inc.
275 Dundas Street, Suite 1500
London, ON
N6B 3L1
Attention: Aldis Makouskis
Trustee in Bankruptcy of Epton Industries Inc.

AND TO: United Steelworkers of America, Local 73
(formerly United Rubber, Cork, Linoleum and Plastic Workers of America, Local 73)
234 Eglinton Avenue East, 7th floor
Toronto, ON
M4P 1K7
Attention: Ken Dawson
Union

AND TO: Epton Industries Inc.
521 King Street West
Kitchener, ON
N2G 1C5
Attention: Mr. Dennis Hall,
Vice-President, Finance
Employer

DECLARATION

WHEREAS:

1. The Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923(formerly C-101854) (the "Pension Plan") is registered under the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997 , S.O. 1997, c.28 (the "Act"); and
2. The Superintendent of Pensions ordered the Pension Plan wound up effective August 14, 1995; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on September 7, 1995; and
4. A notice of proposal to make a declaration (the "Notice of Proposal") that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan was served by the Superintendent of Financial Services pursuant to section 89 of the Act on March 11, 1999; and
5. No written representations were received by the Financial Services Tribunal requesting a hearing within thirty days after service of the Notice of Proposal;

NOW THEREFORE TAKE NOTICE that the Superintendent of Financial Services declares pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

(a) The wind up report filed by the Administrator indicates that the Wind Up Ratio (of assets to liabilities) of the Pension Plan is approximately 65%;

(b) The employer under the Pension Plan is bankrupt and the Administrator has been informed by the Trustee in Bankruptcy that there are no funds available from the Estate of Epton Industries Inc. to make a payment to the Pension Plan.

DATED at North York, Ontario, the 28th day of May, 1999.

Dina Palozzi
Superintendent of Financial Services

Allocations of money from the Pension Benefits Guarantee Fund - Subsection 34(7) of Regulation 909

Pension Plan "A" for Full Time Salaried Employees Exclusive of Those Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439802 (formerly C-15118)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Declaration by the Pension Commission of Ontario under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, respecting **Pension Plan "A" for Full Time Salaried Employees Exclusive of Those Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439802 (formerly C-15118);**

TO: Deloitte & Touche Inc.
BCE Place
181 Bay Street
Suite 1400
Toronto, ON M5J 2V1

Attention: Mr. Bruce Bando, Senior Vice-President

Administrator, Pension Plan "A" for Full Time Salaried Employees Exclusive of Those Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439802 (formerly C-15118)

ALLOCATION

WHEREAS on July 29, 1993 the Pension Commission of Ontario (the "Commission") declared, pursuant to sections 83 and 90 of the Pension Benefits Act, R.S.O. 1990, c. P.8, that the Pension Benefits Guarantee Fund (the "Guarantee F d") applies to Pension Plan "A" for Full Time Salaried Employees Exclusive of Those Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439802 (formerly C-15118) (the "Pension Plan");

AND WHEREAS on July 29, 1993 the Commission made an interim allocation from the Guarantee Fund to the Pension Plan;

NOW THEREFORE the Superintendent shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909 as amended, under the Pension Benefits Act, R.S.O. 1990, c.P.8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Regulation"), an amount not to exceed $1,973,338 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 15th day of March, 1999.

Dina Palozzi
Superintendent of Financial Services

Pension Plan "C" for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Declaration by the Pension Commission of Ontario under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, respecting **Pension Plan "C" for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119);**

TO: Deloitte & Touche Inc.
BCE Place
181 Bay Street
Suite 1400
Toronto, ON M5J 2V1

Attention: Mr. Bruce Bando, Senior Vice-President

Administrator, Pension Plan "C" for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119)

ALLOCATION

WHEREAS on July 29, 1993 the Pension Commission of Ontario (the "Commission") declared, pursuant to sections 83 and 90 of the Pension Benefits Act, R.S.O. 1990, c. P.8, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to Pension Plan "C" for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who Are Members of A Bargaining Unit of Libbey-St. Clair Limited, Registration Number 0439794 (formerly C-15119) (the "Pension Plan");

AND WHEREAS on July 29, 1993 the Commission made an interim allocation from the Guarantee Fund to the Pension Plan;

NOW THEREFORE the Superintendent shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, as amended, under the Pension Benefits Act, R.S.O. 1990 c. P.8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Regulation"), an amount not to exceed $12,988,406, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 15th day of March, 1999.

Dina Palozzi
Superintendent of Financial Services

The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8;

AND IN THE MATTER OF a Declaration by the Pension Commission of Ontario under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, respecting **The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303);**

TO: KPMG Inc.
Commerce Court West
P.O. Box 31, Stn Commerce Court
Toronto, ON
M5L 1B2

Attention: Mr. Michael Creber, Senior Vice-President

Administrator, The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303)

ALLOCATION

WHEREAS on 31st day of July, 1997 the Pension Commission of Ontario (the "Commission") declared, pursuant to sections 83 and 90 of the Pension Benefits Act, R.S.O. 1990, c. P.8, (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to The Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425 (formerly C-15303) (the "Pension Plan");

AND WHEREAS on the 19th day of December 1997 the Commission allocated from the Guarantee Fund to pay to the Pension Plan an amount not to exceed $310,701.53 (the "First Allocation");

AND WHEREAS the Administrator of the Pension Plan has advised that the actual cost to purchase annuities to fund entitlements under the Pension Plan will exceed the estimate of the cost to purchase those annuities which was used for the calculations made to determine the First Allocation from the Guarantee Fund made by the Commission and that a further Allocation is required;

AND WHEREAS the Superintendent of Financial Services is now responsible under the Pension Benefits Act, as amended, for allocating funds from the Guarantee Fund.

NOW THEREFORE the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount, not to exceed $145,058.85 to provide, together with the First Allocation and the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund, but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 28th day of May, 1999.

Dina Palozzi
Superintendent of Financial Services

Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852**;

TO: KPMG Inc.
(formerly Peat Marwick Thorne Inc.)
Suite 3300, Commerce Court West
P.O. Box 31, Stn Commerce Court
Toronto, ON
M5L 1B2

Attention: Michael Creber, Senior Vice President

Administrator, Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852

AND TO: Ernst & Young Inc.
P.O. Box 251, 22nd Floor
Ernst & Young Tower
Toronto Dominion Centre
Toronto, ON
M5K 1J7
Trustee in Bankruptcy

AND TO: Amalgamated Clothing & Textile Workers Union AFL - C10, Local 1464
(formerly Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 351)
34 Madison Avenue
Toronto, ON
M5R 3N6
Union

AND TO: Barrymore Carpet Division of Carpita Corporation
7075 Ordan Drive, Unit A
Mississauga, ON
L5T 1T1
Attention: Leslie MacTaggart
Manager Human Resources/ Payroll
Employer

ALLOCATION

WHEREAS on May 28th, 1999 the Superintendent of Financial Services declared, pursuant to sections 83 and 89 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan for Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation Registration Number C-14852 (the "Pension Plan");

NOW THEREFORE the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $34,831.41 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 28th day of May,1999.

Dina Palozzi
Superintendent of Financial Services

Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854);**

TO: Arthur Andersen Inc.
P.O. Box 29
Toronto-Dominion Centre
1900-79 Wellington Street West
Toronto, ON
M5K 1H1
Attention: David R. Kearney,
Administrator, Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854)

AND TO: PricewaterhouseCoopers Inc.
275 Dundas Street, Suite 1500
London, ON
N6B 3L1
Attention: Aldis Makouskis
Trustee in Bankruptcy of Epton Industries Inc.

AND TO: United Steelworkers of America, Local 73
(formerly United Rubber, Cork, Linoleum and Plastic Workers of America, Local 73)
234 Eglinton Avenue East, 7th floor
Toronto, ON
M4P 1K7
Attention: Ken Dawson
Union

AND TO: Epton Industries Inc.
521 King Street West
Kitchener, ON
N2G 1C5
Attention: Dennis Hall, Vice President, Finance
Employer

ALLOCATION

WHEREAS on May 28, 1999 the Superintendent of Financial Services declared, pursuant to sections 83 and 89 of the Pension Benefits Act, R.S.O. 1990, c. P.8, (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan for Wage Employees of Epton Industries Inc., Registration Number 950923 (formerly C-101854) (the "Pension Plan");

NOW THEREFORE the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $3,144,020 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 28th day of May, 1999.

Dina Palozzi
Superintendent of Financial Services

Tribunal Activities

Appointments of Financial Services Tribunal Members

Name and O.C.	Effective Date of Appointment	Expiry Date
Milczynski, Martha (Acting Chair)	January 13, 1999	
O.C. 1808/98 (Vice-Chair)	July 8, 1998	July 7, 2001
McNairn, Colin (Vice-Chair)		
O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. (Acting Vice-Chair)	June 17, 1999	June 16, 2000
O.C. 904/97	January 13, 1999 (Acting Vice-Chair)	
	May 14, 1997	June 16, 1999
Erlichman, Louis		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M.		
O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather		
O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P.		
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1591/98	July 1, 1998	June 30, 2001
Robinson, Judy		
O.C. 905/97	May 14, 1997	May 13, 2000
Stephenson, Joyce Anne		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
Wires, David E.		
O.C. 257/97	February 27, 1997	February 26, 2000

Hearings Before the Pension Commission of Ontario

Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, 683433, FST File X-0003

In July 1996, the Superintendent issued a Notice of Proposal to Refuse to Approve a Wind-Up Report filed by Asea Brown Boveri Inc. ("ABB") on the grounds that the wind-up report did not provide "grow-in" benefits in accordance with s. 74 of the *Pension Benefits Act* ("PBA"). ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing.

In May 1997, the Superintendent requested that the matter be adjourned pending the outcome of the *GenCorp* case. In July 1997, the matter was adjourned *sine die* for a period not exceeding one year.

On November 6, 1998, the Superintendent of Pensions issued an Amended Notice of Proposal to Refuse to Approve a Wind-Up Report. A pre-hearing conference was held on January 22, 1999.

At the pre-hearing conference it was agreed that the parties would try to resolve some of the issues. A telephone conference call was held on July 12, 1999. The Superintendent was asked to contact the administrator of the Westinghouse Canada Inc. pension plan, a predecessor plan for some affected ABB employees, to determine whether the partial wind-up reports will be filed with the Superintendent pursuant to four Orders issued on May 13, 1999.

McDonnell Douglas Canada Ltd. Salaried Plan, Registration Number 520593, FST File #X-0006

In November 1996, the Superintendent advised certain former members of the McDonnell Douglas Plan that he would not order the partial wind-up they had requested. In December 1996, an individual, on behalf of a group of former McDonnell Douglas Employees, requested a hearing regarding the Superintendent's refusal to order a partial wind-up of the Plan.

A pre-hearing was held in July 1997, and continued in October and November 1997. A jurisdictional hearing was held on March 27, 1998. The hearing panel decided that the Commission had jurisdiction to hear this matter pursuant to Section 89 of the PBA. Reasons for Decision were issued on May 25, 1998. A hearing on the merits was held on November 4, 5 and 6, 1998, and continued on February 9 and 10, 1999. A decision with reasons was released on May 19, 1999. The panel found that the conditions of one or more of sections 69(1)(d) and (e) of the PBA were satisfied with respect to the Plan during the period 1990 - 1994. The matter was referred back to the Superintendent to determine (i) whether to exercise her discretion and order a partial wind-up of the Plan, and (ii) if a partial wind-up is ordered, whether to amend, either or both, of the commencement and end dates of the partial wind-up period. The Reasons for Decision are published in this issue of the Pension Bulletin at page 58.

CWA/ITU Pension Plan (Canada), Registration Number 554717, FST File #X-0012

In March 1998, the Communications, Energy and Paperworkers Union of Canada ("CEP") requested a hearing pursuant to s.89 of the PBA regarding a proposed partial wind-up of the Plan. It asked the Commission: (a) to rescind the resolution of the Trustees to partially wind up the plan; (b) to order the Trustees and Administrator not to take any steps to realize the partial wind up; (c) to require the Plan to accept employer contributions on behalf of active members for work performed after December 31, 1997; and (d) to order the Trustee to fully consider dividing the Plan's assets and liabilities on an equitable basis between a CWA/ITU Plan and a Union Plan based on the number of retirees and the number of active participants.

A jurisdictional motion was heard on February 15, 1999. A hearing on the merits was held on February 22 through 26, 1999. A decision with reasons was released on June 7, 1999. The application was dismissed. The Reasons for Decision are published in this issue of the Pension Bulletin at page 69.

Pension Hearings Before the Financial Services Tribunal

Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File #P-0013–1998

On November 30, 1998, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Approve a Partial Wind-Up Report filed by Monsanto respecting a 1997 plant closure. The grounds for the refusal were: (a) the wind-up report did not deal with the treatment of surplus on partial wind-up; (b) the payment of benefit enhancements on wind-up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind-up report provided that the funds relating to benefits of those in the partial wind-up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc.("Monsanto") requested a hearing before the Financial Services Tribunal. Monsanto has requested an order directing the Superintendent to approve the partial wind-up report pursuant to s.89(9) of PBA.

A pre-hearing conference was held on April 7, 1999. On June 2, 1999, a motion was heard in which Monsanto requested orders for disclosure of various documents and answers to various interrogatories from the Superintendent. The panel made the orders requested and gave the Superintendent 30 days to provide the material. Written reasons for the orders were released on June 21, 1999, and are published in this issue of the Pension Bulletin at page 77.

The hearing is scheduled to proceed on October 4 through 8, 1999.

National Hockey League Players' Pension Plan, Registration Number 353623, FST File P0045-1999

On April 8,1999, the Tribunal received a request for hearing from the National Hockey League regarding the Superintendent's Notice dated March 3, 1999, proposing to order the National Hockey League Pension Society to appoint an Administrator and a trustee for its pension plan that complied with the PBA within 60 days of the date of service of the Notice of Proposal.

The National Hockey League requested that no hearing dates be set. The NHL indicated that it was hopeful that compliance would be achieved through collective bargaining. The NHL and the players' association requested an extension of time to comply with the Notice of Proposal. The Superintendent granted this extension and the Tribunal agreed not to set any hearing dates for the time being.

Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 0321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 0292946, FST File P0051-1999

On March 30, 1999, the Superintendent approved an application by Rockwell Automation Canada Inc. for the transfer of assets in the amount of $28,720,000 from the pension plan for Reliance Electric Limited to the Pension Plan for Employees of Rockwell Automation , effective January 1, 1998. A member of the Reliance plan requested a hearing on May 18, 1999. Rockwell has applied to be granted standing in the hearing.

At a pre-hearing conference on July 6, 1999, the matter was adjourned sine die.

Ontario Institute for Studies in Education Employee Pension Plan, Registration Number 353854, FST File P0054-1999

On June 1, 1999, the Governing Council of the University of Toronto requested a hearing regarding the Superintendent's Notice of Proposal dated April 30, 1999, to partially wind-up the plan. A pre-hearing conference has been scheduled for September 17, 1999. The OISE Professional Staff Association, the United Steelworkers of America and the Ontario Public Service Employees Union, Local 578 have filed Applications for Party Status.

Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0055-1999

Consumers Packaging Inc. filed a request for hearing on June 18, 1999, regarding the Superintendent's Notice of Proposal dated April 30, 1999, to order that the replacement call-in employees who fulfilled certain conditions be admitted as members into the pension plan.

The United Steelworkers of America has been granted standing in the hearing. A pre-hearing conference was held on August 19, 1999. A settlement conference will be held on October 14, 1999. Hearing dates will be scheduled in January and February 2000.

The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File P0058-1999

In June 1999, General Mills Canada Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated May 19, 1999, refusing to approve a partial wind-up report. The reasons for the refusal were: (a) the partial wind-up report did not deal with the treatment of surplus on partial wind-up; (b) the payment of benefit enhancements on wind-up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) proper notice of the partial wind-up was not provided to the affected members, and the partial wind-up report does not allow the affected members who are entitled to an immediate pension and who receive a "special pension upgrade" to commute their pension benefits.

A pre-hearing conference scheduled for October 15, 1999, was adjourned *sine die*. The parties will contact the Registrar by January 15, 2000, to schedule a telephone conference call with the Chair to determine how this matter will proceed.

Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File P0059-1999

On June 14, 1999, the Labourers' Pension Fund requested a hearing pursuant to section 89 of the PBA with respect to the Superintendent's Notice of Proposal dated May 18, 1999, proposing to order the Labourers' Pension Fund of Central and Eastern Canada to prepare and file two new actuarial valuation reports with valuation dates of December 31, 1996, and December 31, 1997, and to use certain assumptions and methods in the preparation of these reports. A pre-hearing conference scheduled for October 14, 1999, was adjourned to allow the parties to narrow and perhaps resolve the issues, subject to the term that the parties are to advise the Registrar by December 31, 1999 whether a pre-hearing conference will be required.

Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0060-1999

On June 16, 1999, the Ontario Teachers' Pension Plan Board filed a request for hearing regarding the Superintendent's Notice of Proposal dated May 6, 1999, to order the Ontario Teachers' Pension Plan Board to comply with section 51 and subsections 48(13) of the PBA and pay to a deceased member's former spouse certain amounts or benefits under a domestic contract. A pre-hearing conference was held on July 21, 1999 and continued on August 31, 1999. Hearing dates are scheduled for December 13 and 14, 1999.

Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0068-1999

Consumers Packaging Inc. filed a request for hearing on June 18, 1999, regarding the Superintendent's Notice of Proposal dated April 30, 1999, to refuse to approve a partial wind-up report.

The reasons for the refusal are that the partial wind-up report does not provide grow in to plant closure benefits for hourly union employees, and that it does not include the liabilities for certain replacement call-in employees who should be admitted into the plan. (See FST File P0055, above.) The United Steelworkers of America's Local 203G has been granted standing in the hearing. A pre-hearing conference was held on August 19, 1999. A settlement conference will be held on January 31, 2000. Hearing dates will be scheduled in March 2000.

Pension Commission of Ontario Decisions - Applications Since March 1999

Note: In this section, "Commission" refers to the Pension Commission of Ontario.)

Commission Decisions - Applications March 25 to May 20, 1999

Surplus Withdrawal on Plan Wind-Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act

At the Commission meeting held March 25, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Retirement Plan for Employees of Canadian Fine Color Company, Limited, Registration Number 0229492

Payment of surplus to Canadian Fine Color Company, Limited from the Retirement Plan for Employees of Canadian Fine Color Company, Limited, Registration Number 0229492, in the amount of 50% of the surplus ($202,650.50 as at July 31, 1998), plus 50% of net investment earnings and less 50% of expenses to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(b) C & C Yachts Manufacturing Limited Partnership Employee Pension Plan, Registration Number C-13343

Payment of surplus to PricewaterhouseCoopers, formerly Price Waterhouse Limited, (a Receiver) from the C & C Yachts Manufacturing Limited Partnership Employee Pension Plan, Registration Number C-13343, in the amount of $219,527.47 as at March 31, 1997 adjusted for all investment earnings to the date of payment and less all fees and expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(c) Standard Trustco Limited Employees' Retirement Plan, Registration Number 556340

Payment of surplus to Standard Trust Company in liquidation from the Standard Trustco Limited Employees' Retirement Plan, Registration Number 556340, in the amount of $421,416 as at June 28, 1991, plus a pro-rata share of all investment gains (net of all investment losses) thereon to the date of payment less a pro rata share of all reasonable costs incurred in connection with the administration and wind-up of the Plan and the implementation of a surplus sharing agreement.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

(d) The Retirement Pension Plan for Employees of the Canadian Car and Canadian Steel Foundries Divisions of Hawker Siddeley Canada Inc., Registration Number 344184

Payment of surplus to Hawker Siddeley Canada Inc. and CGTX Inc. from The Retirement Pension Plan for Employees of the Canadian Car and Canadian

Steel Foundries Divisions of Hawker Siddeley Canada Inc., Registration Number 344184, in the amount of 50% of $10,475,750 as at June 17, 1996 plus 50% of the gains (net of losses) thereon from that date to the date of payment, minus 50% of all costs, fees, disbursements and other expenses.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

At the Commission meeting held April 29, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Retirement Plan for the Salaried Employees of OMYA (Canada) Inc., Registration Number 345462

Payment of surplus to OMYA (Canada) Inc. from the Retirement Income Plan for the Salaried Employees of OMYA (Canada) Inc., Registration Number 345462, in the amount of 50% of $843,800 (the estimated amount of surplus in the plan as at February 28, 1997), plus 50% of investment earnings thereon to the date of payment, subject to adjustment for administrative costs and fees as detailed on page 2 of the Application.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

At the Commission meeting held May 20, 1999, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Pension Plan for Salaried Employees of Robertson Building Systems Ltd., Registration Number 344556

Payment of surplus to Robertson Building Systems Ltd. from the Pension Plan for Salaried Employees of Robertson Building Systems Ltd., Registration Number 344556, in the amount of 52% of the surplus (full amount estimated to be $9,863,600 as at June 30, 1998) plus 52% of investment earnings thereon to the date of payment, less 52% of all reasonable costs incurred but not yet deducted in connection with the administration and wind-up of the Pension Plan and the implementation of the Surplus Settlement Agreement (as defined in the Application), payable immediately following the payment of the surplus entitlements of the Plan Beneficiaries (as defined in the Application); provided that, in accordance with the terms of the Surplus Settlement Agreement, as soon as practical after the end of each calendar month following commencement of payments to the Plan Beneficiaries of their individual surplus entitlements, an amount shall be paid out of the Company's share of the surplus to the Company in cash, equal to the total of the individual portions of the surplus paid to Plan Beneficiaries in the calendar month. If the distribution of the Plan Beneficiaries' share of the surplus has not been commenced by October 15, 1999, the Plan Beneficiaries' share of the surplus may be segregated from the Company's share of the surplus and held in a separate fund, in accordance with paragraph 12(a) of the Surplus Settlement Agreement.

Commission Decisions with Reasons

(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)

INDEX NO.: XDEC-44

PLAN: McDonnell Douglas Canada Ltd. Salaried Plan, Registration No. 520593

DATE OF DECISION: May 19, 1999

PUBLISHED: FSCO Pension Bulletin 8/2 and FSCO website

IN THE MATTER OF the Pension Benefit Act, R.S.O. 1990 c.P.8 (the "Act")

AND IN THE MATTER OF the refusal of the Superintendent of Pensions to make an Order requiring the partial wind-up of the McDonnell Douglas Canada Ltd. Salaried Plan, Registration No. 520593

AND IN THE MATTER OF a Hearing in Accordance with subsection 89(8) of the Act

BETWEEN

GARY MAYNARD
Applicant
- and -
SUPERINTENDENT OF PENSIONS
Respondent
- and -
McDONNELL DOUGLAS CANADA LTD.
Respondent

BEFORE: Kathryn M. Bush, Vice Chair
C.S. (Kit) Moore, Chair
Donald Collins, Member

APPEARANCES: For the Applicant:
Mr. Murray Gold
Mr. Roberto Tomassini

For the Superintendent of Pensions:
Ms. Deborah McPhail

For the Respondent:
Mr. Mark Freiman
Mr. Greg Winfield

Hearing Dates: November 4, 5 & 6, 1998 and February 9 & 10, 1999

Decision Released: May 19, 1999

REASONS FOR DECISION

Nature Of The Application

The Applicant raised with the Pension Commission of Ontario (the "Commission") whether McDonnell Douglas Canada Limited ("MDCan") ought to partially wind-up the McDonnell Douglas Canada Ltd. Salaried Plan, Registration No. 520593 (the "Plan") as a result of activities which occurred at MDCan between 1990 and 1994. On November 8, 1996, the Superintendent of Pensions for the Province of Ontario (the "Superintendent") responded to the Applicant stating that the Superintendent was unable to conclude that there were grounds to order a wind-up of the Plan:

> "...
>
> PCO staff have recently completed a review of the circumstances surrounding the termination of employees at McDonnell Douglas Canada Ltd. during the period of 1990 to 1994. I have fully and carefully considered the facts and issues from that review. After such consideration, I am unable to

conclude that there are grounds to order a partial wind-up of the Plan under subsection 69(1) of the Pension Benefits Act during that time period and I do not intend to make such an order"

By letter dated December 3, 1996, the Applicant wrote to the Commission requesting a hearing with respect to the Superintendent's refusal to issue the requested notice of proposal for a partial wind-up of the Plan.

Pursuant to the Commission's Rules of Practice for Proceedings under Section 89 of the Pension Benefits Act ("PBA"), a formal request for a hearing before the Commission was filed on behalf of the Applicant on January 22, 1997. In it, the Applicant requested that the Commission direct the Superintendent to issue an order requiring the Plan to be partially wound-up in respect of those members of the Plan involuntarily terminated by MDCan during the period from January 1, 1990 to December 31, 1994.

At Pre-hearing conferences held with respect to this hearing the Commission ruled that the issues on the merits should be framed as follows:

- Did a significant number of members of the Plan cease to be employed by MDCan as a result of a reorganization of MDCan's business at any time between January 1, 1990 and December 31, 1994?
- Did a significant number of members of the Plan cease to be employed by MDCan as a result of a discontinuance of all or part of the business of MDCan at any time between January 1, 1990 and December 31, 1994?
- Was a significant portion of the business carried on by MDCan at a specific location discontinued between January 1, 1990 and December 31, 1994?
- If the answer to (a), (b), or (c) is yes, should the Commission, under subsection 89(9) of the Act, direct the Superintendent to order a partial wind-up of the Plan?
- If the answer to (d) is yes, what are the appropriate commencement and end dates for the partial wind-up order concerning the Plan?
- Is the Applicant entitled to have his legal costs incurred in connection with the Hearing paid from the Plan fund or by the Respondent, MDCan?

Facts

The following facts are predominantly taken from the Agreed Statement of Facts filed in the Application.

MDCan is a corporation which carries on business of manufacturing various elements of commercial aircraft, primarily wings. MDCan is a wholly-owned subsidiary of the McDonnell Douglas Corporation ("MD US") based in St. Louis, Missouri. Effective the autumn of 1997, MD US became a wholly-owned subsidiary of the Boeing Corporation based in Seattle, Washington.

MD US carries on business relating to the manufacture of military and commercial aircraft and is the primary customer for MDCan's products. MDCan also produces product for "after-market sales" and parts production. MDCan operates primarily out of a single location in Malton, Ontario.

At all relevant times, MDCan has been the sponsor and administrator of the Plan, a registered pension plan provided for salaried employees of MDCan and its affiliates.

By letter dated August 24, 1992 to Larry Martello of the Commission, the Applicant requested an investigation to be undertaken to determine whether a partial wind-up for the Plan was warranted.

Commission staff conducted an investigation to determine if a partial wind-up of the Plan should be required in this case. The investigation was concluded and culminated in a report prepared by Mark Eagles for the Superintendent dated July 7, 1995 (the "Eagles Report"). Mr. Eagles concluded that:

"Between January 1, 1990 and December 31, 1993, approximately 391 salaried plan members were terminated by the Company and a further 31 were involuntarily retired. During 1994, a further three Plan members were laid off and there were two more involuntary retirements. Of the 427 persons whose employment was involuntarily terminated over that five-year period, 6 have been rehired. Effective January 1, 1990 the plan membership was reported as being 839; thus roughly one half of the plan membership has been involuntarily terminated during the past five years."

Relevant Legislation

The issues to be decided in this matter will be decided on the basis of sections 69(1)(d), 69(1)(e) and 89(9) of the Act. For ease of reference those sections are set out below:

"69.—(1) The Superintendent by order may require the wind-up of a pension plan in whole or in part if,

...

(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;

(e) all or a significant portion of the business carried on by the employer at a specific location is discontinued.

...

Power of Commission

89(9) At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Commission may substitute its opinion for that of the Superintendent."

Jurisprudence

There are a number of decisions of both the Commission and the Ontario courts, which are relevant to the issues to be decided in this matter and relevant portions of those decisions, are briefly set out below.

The Ontario Court of Appeal in the Firestone Canada Inc. v. Pension Commission of Ontario, Murray, DiFrancesco and United Rubber, Cork, Linoleum and Plastics Workers of America, Local, 113, (1990) 1 O.R.(3d) 122 at p.127 made the following statement relating to the Act and pension plan wind-ups:

"...The Act is clearly intended to benefit employees. It prescribes minimum standards for all pension plans in the Province of Ontario. ...

In particular, the Act evinces a special solicitude for employees affected by plant closures."

The recognition in the Firestone case of the "special solicitude" for employees in a plan wind-up leads to the heart of the questions in issue in this hearing, i.e., was there a plan wind-up, in this case a partial plan wind-up.

In the Commission decision relating to the Stelco Retirement Plan for Salaried Employees (Commission, July 7, 1993) the Commission made the following statement:

"In enacting Section 69(1)(d) the Legislature was concerned about protecting older employees with appreciable amounts of service who involuntarily lose their employment as a result of a major change in the way in which their employer carries on its business. It is from that perspective that the term 'reorganization' must be interpreted." (Emphasis Added)

The Divisional Court (1994) 4 C.C.P.B. 108, 115 D.L.R.(4th) 437, 75 O.A.C. 61, approved the Commission's approach to the meaning of "reorganization":

"The commission gave it a broader meaning to include changes in the way in which the different parts of the company related to one another and the size of the company. That meaning has considerable support from the dictionary. One of the meanings of 'organize' in Webster's New World Dictionary (Second College Edition), is 'to make into a whole with unified and coherent relationships'." (Emphasis Added)

The Court of Appeal (1995) 9 C.C.P.B. 126, upheld entirely the decision of the Divisional Court in Stelco.

The Divisional Court in Stelco also approved of the Commission's use of the statements of Stelco as evidence of a reorganization:

"In this case, the commission relied on the company's own statement in its annual report that it was reorganizing plants along business or process lines. In our view, the commission was entitled to rely on that statement as some evidence that the changes that had taken place in the corporation, which resulted in the reduction in the number of employees, were part of a process of reorganization. As we put it in exchanges with Mr. Freiman late in his argument, these steps all constituted the reaction of the company to a number of difficult problems that had arisen from different sources."

The Commission applied the Stelco definition, and evidence, of a reorganization in its decision relating to the Imperial Oil Ltd. v. Ontario (Superintendent of Pensions) (1996), 15 C.C.P.B.31(PCO).

The Imperial Oil decision of the Commission is interesting to this hearing as it addresses the evidence which establishes a reorganization and the issue of whether cost reduction can result in a reorganization:

"The speeches are replete with restructuring and reorganization phrases. They explain that structural change must take place, which will lead, to work force reductions. They indicated that the changes would involve a centralisation of control of the operating companies; consolidation of the business support functions of each division within the company's headquarters; disengagement from unprofitable lines of business; and rationalisation of divisional and headquarters's operations.

...

...As we noted above, operating companies were consolidated into divisions, support functions were centralized, properties were sold, various operations were divested and closed. The result was that a great many employees lost their jobs. The result also was that costs were cut. But, we cannot accept that if cost reduction is the reason to make major changes in the size, structure and functioning of a company, that it precludes a finding that a reorganization took place. We find that Imperial Oil implemented an extensive, large scale reorganization of its business between February 4, 1992 and June 30, 1995. We accept that the purpose of the reorganization of the business was to reduce costs and increase profitability but that does not change the fact that a reorganization of the business took place.

...

Hawker Siddeley Canada Inc. v. Nova Scotia (Superintendent of Pensions) (1993), 108 D.L.R. (4th) (N.S. S.C.); aff'd (1994), 113 D.L.R. (4th) 424 (N.S. C.A.) is additional authority for this view of reorganization. It stated that reorganization of a business does not refer solely to a change in the organization of the company but also the way in which a company does business.

The 'business of the employer' includes the structure under which the employer operates and, as well, the employees involved. (*Hawker Siddeley* at p. 119 (N.S. S.C.))

Did a reorganization of the business of Imperial Oil take place? In our view the answer to that is an unequivocal "yes". The *structural changes, divestment activity, consolidation of functions and elimination of non core business activities* all amounted to a change in the structure in which the business of Imperial

Oil operated. We recognize that other words – such as restructuring – could be used to describe what took place but the reality is that the way in Imperial Oil was *organized to do* business was *materially changed* and that amounts to a reorganization of its business, within the meaning of clause 69(1)(d).

...

...The purpose of clause 69(1)(d) is to protect plan members in situations where a significant number of terminations occur as a result of a reorganization of the business. The reason that prompts the reorganization may be cost cutting, bench marking or cyclical employment patterns due to price fluctuations but whatever the underlying cause, it is the fact of the reorganization that is of legal significance."

The Divisional Court, 16 C.C.P.B. 93, affirmed the Commission's decision in Imperial Oil and went on to provide guidance with respect to how the causal connection to a reorganization ought to be established:

"...

In regard to the last point, the way in which the Commission chose to approach it was sensible, practical and fair. It does not take some great leap of faith or presumption to arrive at the conclusion that significant jobs were lost "as a result of" the reorganization found to have taken place, without the need to examine into the minutiae of evidentiary materials that might be involved, both subjectively and objectively, in looking into each of many hundreds of terminations. ..."

Issues 1, 2, And 3

As noted in the facts as set out above, a significant number of members (427) were terminated or involuntarily retired by MDCan during the period January 1, 1990 and December 31, 1994. These terminations and involuntary retirements also represented a significant percentage, approximately 50%, of total Plan membership as at January 1, 1990.

The issues to be decided are whether those cessations of employment resulted from:

- a reorganization of MDCan;
- a discontinuance of all or part of the MDCan business; or
- the discontinuance of a significant portion of the MDCan business at a specific location.

The sheer number of MDCan's employment terminations during the relevant period, more than 50% of the plan membership, suggests that at least a portion of the MDCan business was discontinued. (In the late 1980's MDCan had approximately 5,000 total employees and the number of employees had dropped below 1,500 total employees by the end of 1994.) MDCan argued that other than minor product lines, the same product was produced at the beginning of the time period as at the end and that the only change was that the demand for their product had decreased and therefore their employment needs had also decreased. This argument does not however, address the question of whether the "shrinking" business constituted a discontinuance of part of the business.

As outlined above, the courts have evidenced a desire to interpret the Act broadly in order to protect the interest of plan members, see Firestone, Stelco and Imperial Oil, supra.

In addition, the materials filed with the Commission include many references to "reorganizational" activities relating to two initiatives during the relevant time period. The first, completed during 1990, involved a change from a functional to a product - oriented business, and a flattening of managerial layers from 8 to 4 levels. This initiative was sometimes referred to as the "Palfrey" initiative. The second, approximately two years later included a change back to a functional or a vertical structure from the product-oriented structure. During these periods MDCan discontinued and transferred out certain non-core products and services.

While we heard a great deal of evidence regarding the changes occurring within MDCan during the 1990-1994 period we will outline only the most illustrative excerpts:

> The Palfrey initiative was described in the "President's Meeting-Report on MDCan" April 27, 1987:
>
> ...
>
> MDCan's goal of becoming a low-cost manufacturer of quality aircraft components is being accomplished through implementation of an extremely extensive and comprehensive Five-Year Plan, which is made up of specific programs and major systems and process changes to the way we work. As part of a master plan, each component of these changes is inseparable from the other components, and the sequence of changes is critical to success. At MDCan, it was felt that attempts to change the way people relate to one another and their daily work, while leaving the management structure and systems intact, were doomed to failure. Since attitudes towards work, as well as interpersonal and interdepartmental relationships, are largely determined by a series of motivational factors inherent in the management system and infrastructure itself, changes to the infrastructure are critical to the success of attempts at continuous improvement. Changing our management and manufacturing methods to facilitate a change to the way all of our people are required to relate to each other and their work required planned change to our management structure, decentralisation and integration of functions into a product orientation, involvement of all of our people, changes in our manufacturing methods and inventory systems, as well as integration of job skills and vertical loading of individual employees. It was felt that without major changes to the infrastructure surrounding our work by management, early attempts at improvements through participation and involvement processes would not sustain themselves. The Five- Year Plan will result in the emergence of a productive aircraft plant substantially changed in geographic layout, methods of manufacture, management methods and structure, and individual task responsibilities. [Emphasis added]

HR Horizontal Team Meeting Records dated February 1, 1990:

> "...
>
> Topic Five: Surplus People
> Presented by: Pat McKenna
>
> Main Points
> - There will likely be a surplus of CBU and salaried employees as a result of the reorganization efforts and production improvements
> - Currently a mechanism exists to deal with surplus people in the CBU's (i.e.: Skills Adjustment Committee, New Technology Committee)
> - There is a need to develop a plan, on a global basis, to waylay growing fears about declarations of surplus; it is important to develop meaningful alternatives for affected people.
>
> Decision
>
> Conclusion:
> - Brian Sawyers to head up a committee consisting of Maj Cober, Harry Buchmueller and a representative from Paul Holub's area.
> - Labour Relations should develop a presentation on the CBU committees already in existence and present such to the VBU's as well as mentioning that a plan is being developed for salaried personnel..." (Emphasis Added)

President's Newsletter dated February 6, 1990:

"...

As your incoming President of MDCan, I've spent the past four weeks getting familiar with what goes on at MDCan, finding a place to reside in Toronto, and looking for opportunities for improvement. I'd like to give you a report of my perceptions so far...

Near-Term Efforts - My personal near-term effort will be focused on three activities:

- Becoming more familiar with MDCan, its people and opportunities for improvement.
- Actively participating in and facilitating the conclusion of the reorganization started in April of 1989 - I feel this reorganization will identify the major players in our effort to create a participative management and a work accomplishment process (our target for completing this activity is within 60 days).
- Actively working with MDCan personnel in future planning for MDCan's strategic direction..." (Emphasis Added)

Administrative Bulletin from the President of MDCan to all Employees dated March 1, 1990:

SUBJECT: ALL EMPLOYEES

TO: REORGANIZATION

One of the key issues that I have run across at MDCan is the delayed reorganization or restructuring.

We have done several things to re-start the restructuring effort that began almost a year ago. ...

The Management Council's first and primary job is to make recommendations about the restructuring. While the Management Council is working on the restructuring, we wanted to publicize:

- the identity of the Council members,
- the structure they are working with, and
- the positions of the Council members.

This information is illustrated on the reverse side, and the people selected will begin the transition into their new roles effective immediately.

The Management Council is currently meeting to define the next tier of the structure, both in terms of function and people. When the Management Council reaches additional conclusions or recommendations, we will let you know." (Emphasis Added)

Letter from the President's Office dated March 28, 1990:

"The news on organization definition (reorganization ?!) is that progress is being made. Our 4th level selections were announced in A.B. No. 90.006 dated 1 March, 1990. The next levels are being chosen at the present time..." (Emphasis Added)

Memorandum regarding "Production Horizontal Objectives and Policy" dated April 20, 1990:

TEAM OBJECTIVES

- Identify and define the current Touch Labour and Support matrices for the Production box. See attachment.
- Following the Reorganization Policy establish the "recommended" Touch Labour and Support Matrices necessary to achieve Production reorganization.
- Discuss and resolve any proposed changes with the appropriate Horizontal and Vertical Teams.
- Develop a Span of Support structure to suit the finalized new reporting matrix.
- Determine the process to be used to select personnel for the new structure.

REORGANIZATION POLICY

When a jurisdictional or decentralization issue cannot be readily resolved, and it can be demonstrated that Process or Product integrity are not or will not be compromised by maintaining the Status Quo, then, for the purposes of completing the next level of reorganization;

- Reporting structure for the function or functions in question will remain as is i.e. within its current Vertical Business Unit and Horizontal Box.
- The Issues in question will be recorded as "open issues" to be resolved by the Team following completion of the next level of reorganization.
- These open issues must be addressed by the members of the Production Horizontal Team, and resolution must be reached at this level. Consultation and discussion with other Verticals and Horizontals may be required to reach these resolutions.
- The open issues will be prioritized by consensus and a "Plan Of Attack" will be developed for each item..." (Emphasis Added)

Letter from the President's Office dated May 30, 1990:

"...

REORGANIZATION TIMETABLE - Level 2 organizational assignments have been recently announced. As stated in that announcement, we are continuing to select Level 1 candidates and to complete the transition to the new organization. It should be noted that the objective of our organizational changes is not to have a different organizational chart but to improve the performance of the enterprise. It is our view that how our organization chart looks is not nearly as important as how our people accomplish work and achieve results. As in all management changes, performance achievement is accomplished by people, not by charts or strategy. Our view of MDCan after completion of this phase of the reorganization is that it should continue to be an exciting place to work with ample opportunity for individual and group achievement. We do not feel that the organization will be rigidly set for a long period of time but will be a dynamic, every-changing structure. These dynamics should provide ample opportunity for individual achievement and recognition..."(Emphasis Added)

Administrative Bulletin from the President of MDCan to "All Supervision Mailing List A-H" dated June 27, 1990:

"MDCan has now selected most of the company's level one leaders who will begin their transition into the more than 238 positions outlined in the attached list. Organizations and levels not shown remain unchanged..."

As MDCan begins to function under the new structure, changes may take place over the transitionary period of the next few months. New positions could be added and those outlined today may be restructured or moved to other vertical units. To be considered for future opportunities, employees should speak with the relevant leaders." (Emphasis Added)

Letter from the President's Office dated July 17, 1990:

"...

Much has been written about 17,000 employees being released by MDCan worldwide. At MDCan, we are planning to reduce our work force in certain areas, primarily in indirect support functions which are no longer necessary to produce the product for today's market, and we intend to hold down indirect hiring while applying direct people to staff the needs of the MD-11 increased production rate..." (Emphasis Added)

Sample termination letter dated July 20, 1990.

HAND DELIVERED

PRIVATE & CONFIDENTIAL

WITHOUT PREJUDICE

IMANTS ANKURS, 55538/2X61

"Dear Sir:

As you are aware, McDonnell Douglas' economic performance has been below all our expectations for some time. Because of this, we are required to undertake severe cost cutting measures as well as restructure our operations..." (Emphasis Added)

Memorandum dated October 15, 1990 from Gene Racicot, HR CORE describing the decentralization of Human Resources services:

"Effective immediately, Human Resources services previously provided on a centralized basis with regard to Employee Benefits; Personnel System (Employee Records); Requests for 807's (Employee Biography) and approvals for special pay adjustments concerning Bereavement, Statutory Holidays and Jury Duty, will be directly handled by the respective Human Resource Administrative Assistant for each Vertical Business Unit as shown in the following chart: ..." (Emphasis Added)

Memorandum from Gene Siddall, MD Can's President, dated December 17, 1990:

"1. GOAL: EVALUATE THE MANAGEMENT PERSONNEL AND COMPLETETHE REORGANIZATION STARTED IN 1989

STATUS: The initial evaluation and organizational changes were completed as a first priority of my new assignment. This action removed the atmosphere of uncertainty of responsibilities and has permitted MDCan to focus on product commitments. Based upon follow on performance evaluations and business needs, further organizational changes have been implemented to strengthen areas critical to our continued success. This process will continue in order to maximise our ability to deliver quality products, when needed, at a competitive cost.

This progress met our expectations in the selection of the right people and exceeded our expectations in management buy-in and timeliness of implementation..."(Emphasis Added)

Mission Statement, which appears to have been written in 1991:

"The philosophical basis of the MDCan organizational change is to intensify the focus on product and place as much responsibility, authority and accountability in the product programs as possible and minimize separate MDCan-wide support functions. As time moves on, more support functions should move into the product programs as it becomes feasible and economical to do so..."(Emphasis Added)

Letter from the President's Office dated January 27, 1992:

"...

The market forces, both demand for our products and selling prices we can get from our customers, continue to put pressure on us to improve operating performance in the three critical areas: cost, quality, and schedule. Because our business will be smaller in 1992 than we forecasted one year ago, we must also significantly realign our management structure, which will cause layoffs in this group. While this process is often called many things, the simple fact is that we find ourselves with too many people for the work we have to do. We will be working to change that situation..."(Emphasis Added)

Administrative Bulletin from the President to all employees dated June 5, 1992:

"SUBJECT: REORGANIZATION

TO: All Employees

Over the last number of months, MDCan has been experiencing a number of economic setbacks in its business. We are all painfully aware of the staff reductions that are being made to try and offset the reduced production levels facing us now and in the future.

As we went through the early stages of the reduction process, it became apparent that the matrix organization that was in place contained numerous examples of parallel effort, that is, people in different verticals doing similar work. In our environment, that is unacceptable.

Memorandum from Canadian President dated June 5, 1992:

"...

MDCan has been planning a reorganization for some period of weeks. Attachment (1) shows the existing organization. Attachment (2) shows the new organization effective 6/5/92..." (Emphasis Added)

Letter from the President dated December 2, 1993

"In the 24 months from November 1991 until now, we have gone through one of the most difficult periods in MDCan's history. We have seen a reduction from 4800 employees to just under 1500. Throughout the downsizing, many people have been required to move to jobs that they have never done before or at best not done for several years..." (Emphasis Added)

Accordingly, the number of Plan members who ceased to be employed by MDCan during the 1990-1994 period together with the restructuring initiatives described in the material cited above lead us to the conclusion that the conditions which would support the Superintendent ordering a partial wind-up of the Plan under section 69(1)(d) and/or 69(1)(e) of the Act have been satisfied.

ISSUE 4

No evidence was raised by any party with respect to how, if a finding was made that the conditions of 69(1)(d) and/or 69(1)(e) of the Act were satisfied the discretion under Section 69 ought to be exercised. Accordingly, we refer this matter back to the Superintendent for consideration.

ISSUE 5

No evidence was raised regarding commencement and end dates for the partial wind-up order regarding the Plan and accordingly we will also refer this matter to the Superintendent for consideration.

ISSUE 6

Neither the Act nor the Commission's Rules of Practice for Proceedings under Section 89 of the Act contain an express right permitting the Commission to award legal costs. In its decision in Re TIE/communications Canada Inc. Pension Plan (1994), 7 C.C.P.B. 120 (PCO) the Commission concluded that in accordance with general administrative law principles the power to award costs must be expressly conferred by legislation.

The Act has now been amended with respect to hearings before the Financial Services Tribunal to award costs. This change to the Act would appear to be in response to the conclusion in the TIE decision that the authority to award costs was lacking.

The Applicant has sought the costs in reliance upon the Nova Scotia Supreme Court decision in Central Guaranty Trust Co. (Liquidator of) v. Spectrum Pension Plan (S) (Administrator of), [1993] N.S.J. 14 (N.S.S.C.). In that case the Court found that the Superintendent under the Nova Scotia Pension Benefits Act had the power to award legal fees to be paid from surplus as an incidental power included in subsection 84(b) which allowed the Superintendent to "attach such conditions and limitations" to the consent as the Superintendent considered "necessary in the circumstances".

The Spectrum decision precedes the changes to the Act to permit the Financial Services Commission to award costs. The language in the Nova Scotia Act was also different as it permitted "necessary" conditions in contrast to the Act permitting "proper" conditions.

We have concluded that in the circumstances of the Act the reasoning in TIE is persuasive and we do not have the ability to award costs in this matter.

ORDER

The conditions of one or more of sections 69(1)(d) and (e) of the Act have been satisfied with respect to the Plan during the period 1990 - 1994 and the matter is referred back to the Superintendent to determine (i) whether to exercise her discretion and order a partial wind-up of the Plan, and (ii) if a partial wind-up is ordered, whether to amend, either or both, of the commencement and end dates of the partial wind-up period.

Dated the 19th day of May, 1999 at the City of Toronto, Province of Ontario.

Kathryn M. Bush, Vice Chair
C.S. (Kit) Moore, Chair
Donald Collins, Member.

INDEX NO.: XDEC-45 (FST File No. X0012)

PLAN: CWA/ITU Pension Plan, Registration Number 554717

DATE OF DECISION: June 7, 1999

PUBLISHED: FSCO Pension Bulletin 8/2 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act");

AND IN THE MATTER OF the decision of the Superintendent of Pensions for Ontario dated February 13, 1998, with respect to the partial wind-up of the CWA/ITU Pension Plan, Registration Number 554717 (the "Plan");

AND IN THE MATTER OF a hearing in Accordance with section 89(8) of the Act

BETWEEN:

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA ("CEP")
(Applicant)
- and -
SUPERINTENDENT OF PENSIONS
(Respondent)
- and -
CWA/ITU PENSION PLAN (CANADA) BOARD OF TRUSTEES
(Respondent)

BEFORE: Mr. David E. Wires, Chair
Mr. Louis Erlichman, Member
Mr. William M. Forbes, Member

APPEARANCES: For CEP:
Mr. Paul J.J. Cavalluzzo
Mr. Bernard A. Hanson

For Superintendent of Pensions:
Ms. Deborah McPhail

For CWA/ITU Pension Plan (Canada) Board of Trustees:
Mr. David Stout

HEARING DATES: February 22, 1999 to February 26, 1999

DECISION RELEASED: June 7, 1999

REASONS FOR DECISION

BACKGROUND

The Plan and Its Administration

The CWA/ITU Pension Plan (Canada) (the "Plan") is a multi-employer pension plan which was established on September 6, 1967. The Plan provides retirement benefits to members employed by employers who agree to pay contributions to the Plan pursuant to collective agreements with local unions affiliated with the International Typographical Union, now known as the Printing, Publishing and Media Workers Sector (the "Sector") of the Communications Workers of America, AFL-CIO, CLC (the "CWA") and pursuant to collective agreements with local unions affiliated with the Communication, Energy & Paperworkers Union of Canada, (the "CEP").

The Plan has been registered in the Province of Ontario since September 25, 1973.

Under Article VIII section 8.01 of the Plan, employers contribute to the Plan in accordance with collective agreements negotiated by local unions.

Article V, section 5.01 of the Plan permits Plan members to accrue a monthly pension at normal retirement age equal to 3.05% of contributions. As of December 31, 1997, the Plan was paying monthly pension benefits to approximately 1,772 retirees and survivors of retirees. As of that date, approximately 113 employers were contributing to the Plan on behalf of approximately 1,790 employees.

The Affiliation of Locals to the CEP

In or around April, 1994, several CWA Locals voted to disaffiliate from the CWA and to affiliate with the CEP. Following the vote, the CEP represented and at all material times thereafter, continued to represent a majority of the active and retired members of the Plan. The status and rights of the members of the Plan, whether active, inactive or retired, in respect of contributions and benefits were not affected by this development. The Plan continued to pay pensions to retirees in accordance with the Plan's provisions; the Collective Agreements that provided for contributions to the Plan remained in effect; the Trustees continued to accept such contributions and the Plan's benefit formula did not distinguish between members represented by the CEP Locals and members represented by the CWA.

In or around March 1996, the Chairman of the Board of the Trustees invited Fred Pomeroy, President of the CEP, to accept a seat on the Board of Trustees. The appointment of Mr. Pomeroy to the Board of Trustees was unanimously approved by the Trustees at the next meeting of the Trustees, in Toronto, in April of 1996. Since that time, the Board of Trustees has consisted of five members, three Trustees affiliated with the CWA, one of whom is the President of the Sector, one Trustee associated with the contributing Employers and Mr. Pomeroy, President of the CEP.

Issues in the Administration of the Plan

Since approximately 1975, the Plan has, upon the advice of its actuaries (The Segal Company) used the Entry Age Normal method of valuation of the Plan's liabilities. (These methods are described in more detail on pages 15 and 16.)

At the meeting of the Trustees, in April of 1996, Mr. Pomeroy requested and was given an opportunity to have the firm of MLH + A, actuaries and consultants, make a presentation to the Trustees advocating the adoption of the Unit Credit method of valuing the Plan rather than the Entry Age Normal method.

At the August 14, 1996 meeting of the Plan's Board of Trustees, the Plan's actuaries, in accord with the direction of the Trustees arising from the meeting of the Trustees in April of 1996, provided a report to the Trustees comparing the actuarial status of the Plan as of January 1, 1996, under the Entry Age Normal cost method and the Unit Credit method.

After the actuary made the report and following a presentation by Trustee Pomeroy in respect of the Unit Credit method of valuation, Mr. Pomeroy moved that the Trustees adopt the Unit Credit method to value the Plan's assets. The motion failed for lack of a second. Mr. Pomeroy thereafter made a motion that the Plan's assets and liabilities of the CEP and CWA portions of the Plan be equitably divided, with any dispute with respect to the division to be settled by alternative dispute resolution procedures. Upon motion duly made and seconded and adopted, Trustee Pomeroy dissenting, the Trustees voted to table Mr. Pomeroy's motion and to direct the Plan's actuary and legal counsel to study and report to the Trustees at the meeting scheduled for the Spring of 1997.

On or about April 25, 1997, the Trustees were provided with a report prepared by the Plan's legal counsel and actuaries. It proposed a partial wind-up of the Plan on the basis of wind-up liabilities. The report proposed to effect the partial wind-up of the Plan by the adoption of a resolution to discontinue the acceptance of contributions from employers bound by collective agreements with the CEP.

At the May 7, 1997 meeting of the Board of Trustees, the report was presented and Mr. Boarman, the Chairman of the Board of Trustees, solicited questions and input. Mr. Pomeroy moved to "file the report" (i.e. the proposal in the report would not proceed further), stating that it did not address the matter of the equitable division of the Plan as he had proposed at the August, 1997 meeting of the Trustees. The motion to file the report failed for lack of a second. The Trustees, Trustee Pomeroy dissenting, directed the Plan's legal counsel and actuary to prepare an updated report and to distribute it before the next meeting of the Trustees scheduled for October 8, 1997.

The updated report was distributed to the Trustees before the October 8, 1997 meeting and was reviewed at the meeting by Plan's legal counsel and actuary. The Trustees then adopted a resolution to effect a partial wind-up of the Plan effective December 31, 1997, Trustee Pomeroy dissenting, by determining an intent to discontinue receiving employer contributions from CEP affiliated locals.

On or about November 4, 1997, written notice of the proposal to partially wind-up the Plan in accordance with section 68(2) of the Act was issued by the Plan's administrator and directed to all required parties in accord with the Act.

By letter dated November 21, 1997, to the Superintendent of Pensions, the CEP requested that the Superintendent issue certain Orders as follows:

1. An Order to the Trustees and Administrator of the Plan to immediately rescind its resolution adopted October 8, 1997, to realize a partial wind-up of the Plan based upon the termination as of that date of active participation in the Plan by CEP Actives and the refusal to accept contributions on behalf of CEP Actives with respect to work performed after December 31, 1997.
2. An Order requiring the Trustees and Administrator of the Plan to cease and desist from taking any steps to realize a partial wind-up of the Plan pursuant to the resolution adopted October 8, 1997.
3. An Order requiring the Plan to continue to accept contributions on behalf of CEP Actives with respect to work performed after December 31, 1997.
4. An Order requiring the Trustees of the Plan to fully consider a division of the assets and liabilities of the Plan between a CWA Plan and CEP Plan on an equitable basis based on the number of retirees and active participants.
5. An Interim Order prohibiting the Trustees and Administrator of the Plan from taking any further steps to realize a partial wind-up of the Plan pursuant to the resolution adopted October 8, 1997.

On December 19, 1997 Mr. Pomeroy in his capacity as Trustee of the Plan and on behalf of all current and former members of locals of the CEP filed a notice of motion in the Ontario Court (General Division) seeking an interim injunction preserving the status quo and prohibiting the partial wind-up of the Plan until final disposition by that Court. By written decision of the Ontario Court (General Division) this motion was denied with costs. Ultimately, upon the Plan's agreement not to object to the Pension Commission's jurisdiction to hear this matter, the CEP abandoned its proceedings in the Ontario Court (General Division).

On or about February 13, 1998, the Superintendent of Pensions advised the parties in part:

> After careful review and consideration of the submissions made, I am unable to conclude that the proposed partial plan wind-up by the Plan administrator is not in compliance with the *Pension Benefits Act*, R.S.O. 1990 and the Regulations thereunder. Therefore, there are no grounds to issue the Orders requested under section 87(1) and (2) of the Act.

ADDITIONAL BACKGROUND

The Plan was set up in 1967 by the International Typographical Union (ITU) as a multi-employer pension plan (MEPP) for Canadian members of the

ITU. The ITU subsequently merged with the Communications Workers of America (CWA).

The Plan is administered by a Board of Trustees including union and management representatives. The Plan is governed by a Trust Agreement.

Employers contribute to the Plan on the basis of rates negotiated as part of collective agreements. Based on actuarial calculations, a benefit formula is developed, converting contribution rates to a defined or "target" benefit, sometimes called "the pension promise". To the extent that positive experience in investment returns or other elements create a funding excess or surplus, the Trustees can improve the benefit formula. If there are negative results, Trustees may have to reduce the benefit formula or even reduce accrued benefits. Employer obligations are limited to the contribution rates specified in collective agreements.

In March, 1994, shortly after several Locals (with a majority of active members in the Plan) moved from the CWA to the CEP, the Board of Trustees voted to remove three trustees who were members of Locals which had joined the CEP.

Through 1994 and 1995, the CEP began a process to have its Locals negotiate a cessation of contributions to the CWA/ITU plan, in order to promote a partial termination of the Plan and in contemplation of a transfer of assets and members to a new CEP MEPP. This process was stopped when it was realized that a partial termination would not transfer the entire CEP-related group, including retirees from Locals which had joined the CEP, to the new Plan.

THE RELEVANT LEGISLATION

The following subsections of the Act and Regulations are of particular relevance to the proceedings:

Administrator

8.—(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,

...

(e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; ...

19. (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

22.(1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

22.(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

22.(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

22.(4) An administrator or, if the administrator is a pension committee or a board of trustees, a

member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

70.(5) The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.

87.(1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

87.(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

(a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;

(b) that the pension plan does not comply with this Act and the regulations; or

(c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

89.(2) (e) Where the Superintendent proposes to make an order under section 87, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

THE ISSUES

Issue 1

Did the Superintendent of Pensions in the decision of February 13, 1998 err in concluding that the proposed partial Plan wind-up by the Plan Administrator was in compliance with the Pension Benefits Act, R.S.O. 1990 and the Regulations thereunder?

Issue 2

Did the Superintendent of Pensions, in the decision of February 13, 1998, err in finding that the Plan was being administered by the Board of Trustees in accordance with the Act the Regulations and the Plan?

One further issue was submitted for consideration subject to the respondents' argument that the tribunal did not have jurisdiction to consider the issue.

Issue 3

Did the Superintendent of Pensions, in its decision of February 13, 1998, err in finding that the Plan Administrator did not fail to comply with its Statutory and common law fiduciary duty, by failing to properly consider the alternative of the division of the Plan before implementing its proposed partial wind-up?

JURISDICTIONAL ISSUE

The respondents asserted that the Commission had no jurisdiction to consider common law fiduciary duties. The Panel heard argument on the respondents' motion to strike the third issue from the hearing. The Panel ruled that it would hear all the evidence, including the evidence on Issue 3 and rule on jurisdiction thereafter. The panel ordered and received particulars of the allegations in Issue 3.

The particulars provided by the applicant were as follows:

1. The Respondent Board of Trustees is the administrator of the pension plan.
2. The Plan does not expressly prescribe a process that requires consideration of alternatives to a plan wind-

up. The requirement to consider the alternative to a partial wind-up of an equitable division of the assets and liabilities of the Plan as proposed by the CEP representing a majority of the Plan's active and retired members is a necessary implication of the Trustees' acceptance of their Trusteeship and their agreement to act in that capacity in Agreement and Declaration of Trust; and their general powers, duties and obligation under the Plan of Benefits.

3. No steps were taken by the Board of Trustees to complete the prescribed process to consider alternatives to a wind-up to the Applicant's knowledge prior to the hearing.
4. The trustees failed to consider or used extraneous or irrelevant considerations or permitted union affiliations to conflict with the exercise of their duties; breached obligations to exercise their discretion, failed to exercise the level of prudence expected and failed to hold the balance evenly with strict candor between beneficiaries or acted in a manner prejudicial to the interests of a class of beneficiary and failed to act in the best interests of plan members.

The applicant sought, inter alia, an order that the trustees equitably divide the Plan's assets and liabilities.

The Applicant submitted that the Commission is granted broad authority to administer the Act and the regulations entitling it to give effect to the legislative intent and policy considerations underlying the Act. The applicant argued that the principles articulated in case law gave the Commission the power to impose on administrators and enforce common law fiduciary duties.

In any event, the Applicant argued, the Commission has jurisdiction to apply equitable principles of trust law to assist it in determining the scope of administrator's statutory fiduciary obligations pursuant to section 22 of the Act.

Further it was argued that the Commission has a duty to address the obligations which form an inherent part of the Plan whether these arise by way of contract or trust principles. Fiduciary duties are imposed on the administrator pursuant to section 22 of the Act, the Plan's trust document and the very nature of the trust relationship.

In respect of Issue 3, the respondents submitted that the powers of the Commission were defined by the provisions of its enabling legislation and the Commission was not entitled to go outside the scope and ambit of the Act, the regulations and the plan documents. It was submitted that the role of the Commission is to ensure that the Act and Regulations are properly administered. The role of the Commission is that of a watch dog. A function of the Commission is to hear appeals from decisions of the Superintendent and to act as a fiduciary in order to guard the rights of plan beneficiaries arising from the Act, the regulations and the Plan itself.

In this Panel's view, the provisions of sections 19 and 22 of the Act impose statutory obligations that are enforceable by the Commission independent of causes of action in tort, fiduciary or trust law. The role of the Commission is to apply those sections as the evidence and the facts demand but not to usurp the role of the Courts under other statutes and the common law. Proof of breach of tort, fiduciary or trust law is proof of breach of sections 19 and 22 of the Act but not, in our view, a separate enquiry giving rise to claims outside the scope of the statute. It is not for the panel to speculate on circumstances where the Commission may find that a plan administrator complied with the provisions of the Act, in the face of evidence establishing breach of the administrator's common law fiduciary duties to the Plan and its members. In any event, the evidence in this matter falls short of establishing breach of the Act.

ISSUES 1 & 2

The Applicant, CEP, asks that the Commission deny the application for a partial wind-up on the grounds that the Trustees failed to fully consider a division of assets and accordingly there was a failure to exercise

the care and diligence required of a trustee under the Act and the common law.

As a remedy, the Applicant asks the Commission to order the parties to resolve the issue between them, using Alternative Dispute Resolution, if necessary, and to report back to the panel.

The application is denied. Such a remedy is outside the jurisdiction of the Panel to order.

Reasons

Pension plan trustees have broad fiduciary obligations in administering pension plans, and the Pension Commission of Ontario shares the obligation to ensure that all plan members and beneficiaries are treated fairly and without bias.

The Applicant argued that the Trustees breached their common-law fiduciary obligations by not fully considering Mr. Pomeroy's proposal for a division of assets that would have transferred retirees from locals which had joined the CEP as well as CEP actives to a new CEP MEPP.

Evidence was presented that indicated that the Trustees considered the division of plan assets as proposed by Mr. Pomeroy, took professional advice and rejected the proposal. The Applicant argues that consideration is not enough, but rather that there was a failure to agree with Mr. Pomeroy's proposal. Since Mr. Pomeroy is the head of the union which now represents the majority of active Plan members it was argued that the trustees had a duty to acknowledge the rights of his constituency by following his proposal.

There was an admitted failure to make timely disclosure to Mr. Pomeroy of all the professional advice on which the Trustees' decision was made. While this was unfortunate, and certainly is not condoned by the panel, it is unlikely to have had any substantive effect on the decision of the Board of Trustees, or on the position of Mr. Pomeroy or passage of the resolution to wind-up the plan. Subsequent to the disclosure of this advice, the basic disagreements on funding methods and the future of retirees in the plan remained.

For the Superintendent or the Pension Commission of Ontario to intervene in the administration of a registered pension plan, there must be evidence of a failure by trustees to administer the Plan in accordance with the Act the Regulation or the plan documents, or a breach of the trustees' duties. Other statutes, such as the *Trustee Act of Ontario*, grant specific rights, obligations and remedies in respect of the administration of a trust.

The Applicant argued that the Plan's Trust Agreement did not give the Trustees authority to stop accepting contributions from Contributing Employers. The panel disagrees. In the panels' view, this power is implicit to enable the Trustees to perform the duties assigned to them.

The Applicant argued that the majority of Trustees failed to fulfill the requirements of Sections 22(1) and 22(2) because they were biased and guilty of acting in bad faith.

The Applicant did not, however, present concrete evidence of any way in which the Trustees failed to treat all plan members fairly. Surplus has been used, from time to time, to provide increased benefits to both retirees and active members. There was no evidence of differential treatment between plan members who remained in the CWA and those who joined the CEP.

The refusal to convert from Entry Age Normal to Unit Credit funding was based on professional advice and the Trustees' judgement concerning the demographics of plan membership. Both Unit Credit and Entry Age Normal are generally accepted funding methods recognized by the Canadian Institute of Actuaries and the other relevant authorities.

The Entry Age Normal funding method is a level funding method whereas the Unit Credit funding method can result in increasing costs. Unit Credit provides for funding based on the average age of each plan member. Unless the average age of the group

remains constant or decreases, funding costs will increase over time. Entry Age Normal funding seeks to provide more level funding over time by averaging funding costs over the full period from entry age to assumed retirement. In the absence of future favourable circumstances (e.g. higher-than-forecast rates of investment return, an influx of younger members) creating substantial actuarial gains, the Trustees would eventually be required to reduce the formula for future benefit accruals.

On the evidence, the Trustees' decision to continue to use the Entry Age Normal funding method in order not to increase the risk of having to reduce the benefit formula in the future is not unreasonable.

The decision to seek a partial wind-up rather than a division which would also transfer out of the Plan retirees from Locals now represented by the CEP can be justified by an understandable desire to maintain the financial viability of the ongoing CWA plan. The Trustees were, it seems, concerned about satisfying the "pension promise".

The Applicant argued that a new CEP MEPP and its members would be disadvantaged by a partial wind-up, since transferring members would be likely to exercise their option, as required by the Act, to transfer the value of their accrued benefits to a locked-in RRSP. It is not the responsibility of the Trustees of the CWA plan to ensure the viability of another pension plan. There is no evidence that members and retirees will be disadvantaged by a partial plan wind-up.

It was argued that the desire of the CWA Trustees to terminate the participation of CEP members in the plan was evidence of conflict of interest, since it was in their interest to end the problems resulting from inter-union rivalries. This contention is difficult to accept, given that it was the clear intention, supported by active measures, of the CEP, and its representative on the Board of Trustees, to withdraw the CEP-represented group from the Plan. In any case, the evidence does not support a finding that a partial termination, following the terms of the legislation and providing to all members their full share of accrued surplus harms any plan members.

Clearly there has been a strong feeling among some retirees that they have been unfairly treated in the Plan, and that benefit improvements to retirees have been insufficient. This was the brunt of the evidence of Mr. Buller, a retiree who was granted standing before the panel.

There was no evidence presented that indicated that retirees had been relatively disadvantaged by the actions of the Trustees. The Plan provides some credit for service prior to contributory service, and benefit improvements, arising from the use of surpluses, have consistently been provided to both actives and retirees.

Counsel for the Applicant asserted that it was necessary to import "labour relations realities" into the pension context - specifically to require Trustees to represent the majority interests of plan members at the Board in the same way a bargaining agent is required by labour relations statutes to represent its members. Without specifically commenting on the cases supporting this argument, we find the Trustees' overriding duties were to the Plan and the Trust and there was no evidence to support a finding of breach of these duties.

Accordingly, the application is dismissed.

Dated this 7th day of June, 1999 at the City of Toronto, Province of Ontario.

Mr. David E. Wires, Chair
Mr. Louis Erlichman, Member
Mr. William M. Forbes, Member

Financial Services Tribunal Decision with Reasons

(Note: Only those FST decisions pertaining to pensions are included in this section.)

INDEX NO.: FST Decision #3 (FST File No. P0013)

PLAN: Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230

DATE OF DECISION: June 21, 1999

PUBLISHED: FSCO Pension Bulletin 8/2 and FSCO website

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Partial Plan Wind Up Report submitted by Monsanto Canada Inc. to the Superintendent of Financial Services respecting the Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

MONSANTO CANADA INC.
Applicant
- and -
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE: Mr. Colin H.H. McNairn, Vice Chair of the Tribunal and Chair of the Panel
Mr. Louis Erlichman, Member of the Tribunal
Mr. C.S. (Kit) Moore, Member of the Tribunal

APPEARANCES: For the Applicant:
Ms. Freya Kristjanson
Mr. Markus F. Kremer

For the Superintendent:
Ms. Deborah McPhail

HEARING DATE: June 2, 1999
Toronto, Ontario

REASONS FOR ORDERS

The Background

On June 2, 1999 the Tribunal held an oral hearing on a preliminary motion in this matter, made by the Applicant, Monsanto Canada Inc. ("Monsanto"), for orders directing the Respondent , the Superintendent of Financial Services (the "Superintendent"), to disclose certain documents and to respond to certain interrogatories. At the conclusion of the hearing, after receiving submissions from both parties, the Tribunal made the orders set out in Appendix A and Appendix B (the "Orders") and undertook to provide written reasons for those Orders thereafter.

The matter to which the Orders relate is a request for a hearing, filed by Monsanto on December 31, 1998, pursuant to subsection 89(8) of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997* (the "Act"). That request concerns a Notice of Intent (the "Notice") to Refuse to Approve a Partial Wind Up Report (the "Report"), which Notice was served by the Superintendent on Monsanto on November 30, 1998. The Report was submitted by Monsanto to the Superintendent on

August 11, 1997; it relates to the partial wind-up of the Pension Plan for Employees of Monsanto Registration Number 341230 (the "Plan") as it affects certain employees who received notice of termination as a result of two separate corporate reorganizations (the "Affected Employees"). The Report proposes that the partial wind-up be effective May 31, 1997 (the "Partial Wind Up Date").

The Notice recites a number of reasons for the Superintendent's decision to serve it. In essence, it states that the Report does not meet the requirements of the Act and the regulations under it and does not protect the interests of members and former members of the Plan because:

- It does not treat the benefit enhancements provided for certain of the Affected Members, by amendment to the Plan, as distributions from the surplus of the Plan subject, as such, to requirements of equitable allocation among members of the Plan and to the prior consent of the Superintendent and of a certain percentage of the members of the Plan, and
- It does not contemplate the distribution of the assets of the Plan, including surplus, as at the Partial Wind Up Date, that relate to the Affected Members and it allows Affected Members to leave their pensions and deferred pensions in the Plan.

The Basis for the Motion

One of the issues in this matter that Monsanto identified, in its pre-hearing conference brief, is whether it can rely, to its benefit, on the doctrine of "legitimate expectation", which has received acceptance in Canadian administrative law (see *Old St. Boniface Residents Association v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385, at p. 414 (Supreme Court of Canada)). Counsel for Monsanto maintained, on the motion, that this doctrine would apply in the present case if it could be established that Monsanto had a legitimate expectation that the Superintendent would follow the past practice of the office of the Superintendent, as to the treatment of benefit enhancements and the need (if any) for surplus distribution, on the partial wind-up of a pension plan. Counsel alleged that the Superintendent had a duty, by virtue of the doctrine, to act fairly in changing any such practice, to the detriment of Monsanto and others similarly situated and, therefore, was required to engage in prior consultation with, or prior communication to, Monsanto and other affected persons. The disclosure orders against the Superintendent were requested in an effort to obtain information regarding any such past practice and the circumstances regarding any change thereto.

In its pre-hearing conference brief, Monsanto identified, as a further issue, whether the Superintendent is estopped, by any practice of the kind described above, from refusing to approve the Report. Counsel for Monsanto maintained, on the motion, that there was another relevant issue, namely whether the failure to consider past practice and the significance of any change thereto would constitute an improper fettering of a discretionary authority under the Act to approve partial wind-up reports. These other issues were offered as further justification for ordering the Superintendent to provide the requested information about past practice.

The Authority of the Tribunal to Entertain the Motion

The Interim Rules of Practice and Procedure of the Tribunal address the requirements of pre-hearing disclosure, by a party to a proceeding before the Tribunal, of information relating to the subject matter of the proceeding, including documentary information and information requested by way of response to specific interrogatories (i.e. written questions) posed by another party. Rule 31.01(d) imposes an obligation on all parties to "provide such _ information, particulars or documents as the Tribunal considers necessary to enable it to obtain a full and satisfactory understandingof an issue in the proceeding."

Rule 19.01 provides that the Tribunal, may issue procedural directions providing for interrogatories that are necessary to;

(a) clarify evidence filed by a party;

(b) simplify the issues;

(c) permit the full and satisfactory understanding of the matters to be considered; or

(d) expedite the proceeding.

Monsanto initially put its interrogatories, relating to the practice of the Superintendent in dealing with partial wind-up reports, to the Superintendent through its pre-hearing conference brief. The Superintendent indicated, in her pre-hearing conference brief, that she was unwilling or unable to provide the information called for by those interrogatories. Monsanto was dissatisfied with that response and, as entitled under Rule 20.03, filed a notice of motion to have the matter determined by the Tribunal.

It follows from Rule 20.03, and from the Tribunal's authority under Rule 13.01 to make procedural orders, that the Tribunal may entertain Monsanto's motion for the disclosure orders it requested against the Superintendent. Section 5.4 of the *Statutory Powers Procedure Act* provides that a tribunal, such as the Tribunal, that has made rules governing its practice and procedure, may at any stage of a proceeding before it, subject to any other Act or regulation that applies to the proceeding, make orders for;

the exchange of documents,
the oral or written examination of a party,
the exchange of witness statements and reports of expert witnesses,
the production of particulars,
any other form of disclosure,

except that this authority does not authorize the making of an order requiring disclosure of privileged information.

A Test for Pre-Hearing Disclosure

We believe that the Tribunal should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories, in the following circumstances (if not also in other circumstances);

- the information sought is arguably relevant to an issue in the proceeding and that issue is not a frivolous one,
- the information sought is sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision, and
- the information is not privileged.

This test for ordering disclosure is consistent with Rules 13.01 and 20.03 of the Tribunal and section 5.4 of the *Statutory Powers Procedure Act*.

Analysis

Counsel for the Superintendent maintained that the doctrine of "legitimate expectation" was irrelevant in this case because the proceeding before the Tribunal was by way of a hearing de novo with the result that the Tribunal was not inhibited or otherwise affected by the prior practice of the Superintendent in similar matters. We do not think that the function of the Tribunal can be divorced, to this extent, from the function of the Superintendent. The hearing before the Tribunal that the Act affords in this case is simply part of the over-all process of regulatory review of pension plan wind-up reports (see ss. 70 and 89(4), (6) – (9) of the Act). Subsection 89(9) of the Act, which suggests that the Tribunal is to carry out a hearing de novo in performing its role in that process, allows the Tribunal, in effect, to step into the shoes of the Superintendent. Therefore, the Tribunal can properly take account of any factors pertaining to the matter that the Superintendent should have considered. One of those factors might well be whether the doctrine of "legitimate expectation" applies in the circumstances and to what effect.

Counsel for the Superintendent also maintained that the doctrine of "legitimate expectation" cannot possibly apply in this case as it does not operate where there would be a resulting interference with the requirements of law. In essence, the argument was that the position taken by the Superintendent in the Notice was dictated by the Act and, whatever the past practice may have been, the Superintendent had no latitude to do anything but to apply the requirements of the Act. In our view, it is at least arguable that the Superintendent had some discretion in the matter of whether to approve the Report given subsection 70(5) of the Act, which provides that:

> The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan [emphasis added].

Subsection 70(6) may have the effect of narrowing any such discretion in that it suggests that the Superintendent would be obliged to refuse to approve a partial wind-up report if the members and former members of the pension plan were given rights and benefits that fell short of those they would have on a full wind-up of the plan. The precise effect of subsection 70(5), particularly as read with subsection 70(6), will no doubt be the subject of further submissions at the hearing on the merits of this case. At this stage of the proceeding, it would be inappropriate to make a definitive determination as to whether the Superintendent had any discretion on the question of whether to approve the Report.

Finally, counsel for the Superintendent maintained that the doctrine of "legitimate expectation" may only be raised on a judicial review application or a statutory appeal and, therefore, it has no place in this proceeding before the Tribunal. We agree with counsel for Monsanto that the particular duty of fairness that is mandated by this doctrine is not an element of judicial review or statutory appeal but that those processes have simply provided the means for enforcing that duty. There is no reason, in principle, why the duty should not be recognized in the context of a proceeding before an administrative body such as this Tribunal.

For the purposes of Monsanto's motion for orders of disclosure against the Superintendent, we are not required to make, and we do not make, any decision as to whether the doctrine of "legitimate expectation" does, in fact, apply in this matter, whether it would entitle Monsanto to any relief and what any such relief might be. We have only to decide, at this stage, whether Monsanto's argument that the doctrine applies is a frivolous argument.

Conclusion

We are persuaded that the information sought by Monsanto, as to any practice of the Superintendent in matters of this kind, is arguably relevant to the issue that Monsanto has raised of whether the doctrine of "legitimate expectation" apples in this case and that this is not a frivolous issue in the present context. The information has been sufficiently particularized by Monsanto and no claim has been made that disclosure would involve a violation of privilege. Therefore, applying the test for pre-hearing disclosure that we have adopted, we made the Orders set out in Appendices A and B. The Orders are in the form requested by Monsanto except that the time for compliance by the Superintendent is four, rather than three, weeks from the date of the Orders.

Dated the 21st day of June, 1999 at the City of Toronto, Province of Ontario.

Colin H. H. McNairn, Chair

C. S. (Kit) Moore, Member

Louis Erlichman, Member

Appendix A

The Superintendent of Financial Services (the "Superintendent") is hereby ordered to disclose the documents described below to Monsanto Canada Inc. within four weeks of the date of this order:

All records, documents and other materials in the possession of the Superintendent or the Financial Services Commission of Ontario in relation to the following:

1. Any memoranda, analysis, notes or reports identifying a change in position or administrative practice in the period November 1992 to November 1998 regarding matters raised in the Notice of Proposal to Refuse to Approve served by the Superintendent on Monsanto Canada Inc. on November 30, 1998 and the reasons for such change.
2. Any memoranda, analysis, notes, reports or other materials relating to matters raised in the interrogatories attached as Appendix B.

Dated this 2nd day of June, 1999.

Appendix B

The Superintendent of Financial Services (the "Superintendent") is hereby ordered to answer the interrogatories of Monsanto Canada Inc. set our below within four weeks of the date of this order:

1. Have partial wind-up reports been filed in which the plan which is the subject of the partial wind-up has been in actuarial surplus as at the date of the partial wind-up report, during the period November 1992 to November, 1998? If so, how many?
2. How many of those reports were approved, or not refused by the Superintendent, where there was no immediate distribution of surplus, or where the report indicated that any surplus distribution relating to the partial wind-up group could be dealt with at the time of full wind-up?
3. Has the Superintendent accepted partial wind-up reports in the period November 1992 to November, 1998 for plans with actuarial surplus as at the partial wind-up date, in which the report stated that if and when the plan is fully wound up, that any surplus attributable to the partial wind-up group at the time the plan is fully wound up will be dealt with at the time of full wind-up in accordance with the terms of the plan and applicable legislation? Has the Superintendent in this period granted his or her consent pursuant to section 70(3) of the Act even where no present distribution of such actuarial surplus was provided for? If so, on how many occasions?
4. See letter received from the Pension Commission, and attached hereto as Schedule 1. Is this the form of letter that, in the past, has been sent by the Superintendent in situations relating to item =3, above? How many letters in this form have been sent by the Commission in the period November, 1992 to November, 1998?
5. At any time prior to August, 1997, did the Superintendent indicate that he or she would be changing this practice regarding the treatment of surplus on partial wind-up and, if so how was this communicated?
6. Has the Superintendent approved the provision of benefit enhancements coincident with partial wind-up reports in the period November, 1992 to November, 1998? If so, how many? Were the benefit enhancements treated as a distribution of surplus in each case? If not, how many and in what proportion of cases were they treated as a distribution of surplus or indirect payment of surplus to the employer, and what were the reasons for such treatment? Where such benefit enhancements were not treated as a distribution of surplus or indirect payment of surplus to the employer, why were they not so treated?

7. Has the Superintendent required all partial wind-up reports filed in the period November 1992 to November 1998 to provide for the distribution of all plan assets relating to the partial wind-up to provide for the purchase of annuities such that members and former members were precluded, notwithstanding the deemed or actual election, from leaving their pensions or deferred pensions in the plan? If not, how many partial wind-up reports have been approved by the Superintendent during such period which permitted the plan administrator to either choose to leave benefits in the plan as is the administrator's right under ss. 43 and 72(2) of the Act, or permitted the member/former member to elect to leave benefits in the plan pursuant to the plan terms?

Dated this 2nd day of June, 1999.

SCHEDULE 1

Dear

Re:

Based on the documents in our files and our review of the partial wind-up report and other documents submitted by you as required under the *Pension Benefits Act*, R.S.O. 1990 (the "Act") and Regulation 909, R.R.O. 1990, as amended, the proposals set out in the partial wind-up report for the distribution of pension benefit entitlements are acceptable for purposes of the Act. Pursuant to my authority under subsection 70(3) of the Act, I hereby authorize the distribution of the assets of the pension plan to the members, former members and other persons affected by the partial wind-up effective September 30, 1993 in accordance with that report.

Please note that pursuant to subsection 70(6) of the Act, the members, former members and other persons affected by the partial wind-up "shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up." The rights and benefits referred to in this subsection may include any entitlements to surplus that would exist on a full wind-up. As a result, the surplus attributable to the members, former members and other persons affected by the partial wind-up must be dealt with in accordance with the Act.

In the event you have any questions, please contact David Allan, Pension Officer, of this office at (416) 314-0612.

Yours very truly,

D. Ross Peebles
Superintendent of Pensions

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